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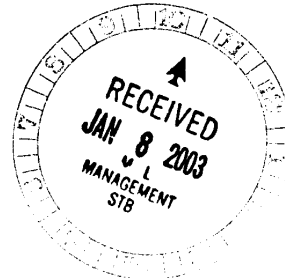
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Public Record

January 7, 2003

**VIA FEDERAL EXPRESS**

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423-0001

Freeborn & Peters



**Re: Surface Transportation Board Docket No. AB-6 (Sub-No. 397X);  
The Burlington Northern and Santa Fe Railway Company Abandonment  
of McMillan, Washington**

*Attorneys at Law*

311 South Wacker Drive  
Suite 3000  
Chicago, Illinois  
60606-6677  
Tel 312.360.6000

Brian Nettles  
Paralegal  
Direct 312.360.6336  
Fax 312.360.6596  
bnettl@  
freebornpeters.com

Dear Secretary Williams:

Enclosed for filing in the referenced docket are the original and ten copies of The Burlington Northern and Santa Fe Railway Company's Notice of Exemption, and a check for \$2,700.00, covering the filing fee.

Please acknowledge receipt of this material by date stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

The environmental and historic reports have been forwarded to the responsible agencies and copies have been directed to the Section of Environmental Analysis. The Notice of Exemption includes a certificate of notice upon various interested state and federal authorities (the U. S. Department of the Interior – National Park Service, Recreation and Conservation Assistance Program; the U. S. Department of the Interior – National Park Service, Land Resource Division; the Department of Defense, Military Traffic Management Command; Washington Utilities and Transportation Commission; the Washington State Transportation Commission; and the Chief of Forest Service, U. S. Department of Agriculture).

Sincerely,

Brian Nettles

/bn  
Enclosures

**FEE RECEIVED**  
JAN 08 2003  
SURFACE  
TRANSPORTATION BOARD

**FILED**  
JAN - 8 2003  
SURFACE  
TRANSPORTATION BOARD

*Chicago*

*Springfield*

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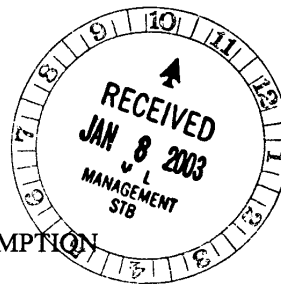
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Public Record

BEFORE THE

**SURFACE TRANSPORTATION BOARD**

Abandonment of a line of Railroad  
Between BNSF M.P. 28.10 and  
M.P. 28.34 near McMillan in  
Pierce County, Washington

NOTICE OF EXEMPTION  
Docket No. AB-6  
(Sub-No. 397X)



TO THE SURFACE TRANSPORTATION BOARD:

207011

The Burlington Northern and Santa Fe Railway Company (BNSF) hereby notifies the Board that it intends to abandon its line of railroad between BNSF M.P. 28.10 and M.P. 28.34 near McMillan, in Pierce County, Washington, a total distance of 0.24 miles, pursuant to the Board's Exemption of Out of Service Rail Lines, 49 C.F.R. § 1152.50 and in support of the Notice, respectfully provides the following information:

- I. Proposed consummation date for the abandonment.

February 27, 2003

**FILED**

JAN - 8 2003

- II. Certification required in 49 C.F.R. § 1152.50(b)

**SURFACE  
TRANSPORTATION BOARD**

The attached Certification of Michael Smith certifies that no formal complaint filed by a user of rail service on this line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line is pending with the Board or any U.S. District Court or has been decided in favor of a complainant within the last two years. The attached Verification of Richard A. Batie certifies that no local traffic has moved over this line for at least two (2) years and any overhead traffic on the line can be rerouted over other lines.

- III. Information required by C.F.R. § 1152.22(a)(1-4), (7), (8) and (e)(4).

**FEE RECEIVED**

JAN 08 2003

**SURFACE  
TRANSPORTATION BOARD**

(a) General

- (1) Exact name of Applicant.

The Burlington Northern and Santa Fe Railway  
Company

- (2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.

Applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.

- (3) Relief sought.

BNSF seeks an exemption from Surface Transportation Board approval authorizing the abandonment and discontinuance of service of the McMillan, Washington line specified above.

- (4) Detailed map of the subject line.

See Exhibit A.

- (5) Name, title and address of representative of applicant to whom correspondence should be sent.

Michael Smith  
Freeborn & Peters  
311 S. Wacker Dr., Suite 3000  
Chicago, Illinois 60606-6677

- (6) List of all United State Postal Service ZIP Codes that the line traverses.

The McMillan, Washington line traverses United States Postal Service Zip code 98374.

- (7) Statement of whether the properties proposed to be abandoned are suitable for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission or recreation. If the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.

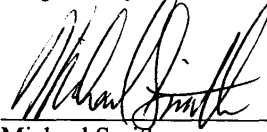
The right of way may be suitable for use for other public purposes such as a trail. On part of the properties involved, title considerations may affect the conveyance of the land for use other than railroad purposes. Based on information in our possession, the line does contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

IV. Level of protection.

The interest of railroad employees will be protected by the conditions imposed in Oregon Short Line RR Co. - Abandonment - Goshen, 360 I.C.C. 91 (1979)

- V. Certification that the notice requirements of §§ 1152.50(d)(1) and 1105.11 have been met. attached.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Smith", written over a horizontal line.

Michael Smith

Freeborn & Peters

311 S. Wacker Dr. Suite 3000

Chicago, Illinois 60606-6677

Phone: (312) 360-6724

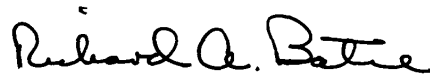
Fax: (312) 360-6598

Date: January 7, 2003

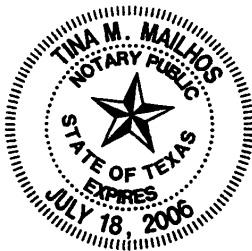
**VERIFICATION**

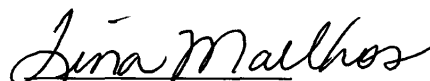
STATE OF TEXAS            )  
                                  )ss  
COUNTY OF TARRANT    )

Richard A. Batie makes oath and says he is Manager, Shortline Development in the Network Development department of The Burlington Northern and Santa Fe Railway Company; that he has been authorized by the Applicant to verify and file with the Surface Transportation Board the foregoing Notice of Exemption in AB-6 (Sub-No. 397X); that he affirms that the line has had no local traffic in the prior two (2) years and that there is no overhead traffic to be rerouted; that he has carefully examined all of the statements in the Notice; that he has knowledge of the facts and matters relied upon in the Notice; and that all representations set forth therein are true and correct to the best of his knowledge, information, and belief.

  
Richard A. Batie  
Manager, Shortline Development

Subscribed and sworn to before me the 6 day of January 2003

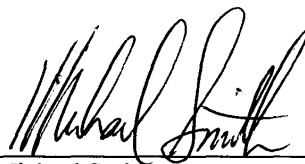


  
Notary Public

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY  
NO. AB-6 (Sub No. 397X)

**CERTIFICATION**

I hereby certify that (1) no formal complaint filed by a user of rail service on this line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line is pending with the Board or any U.S. District Court or has been decided in favor of a complainant within the last two (2) years; (2) service of notice upon the U.S. Department of the Interior, National Park Service, Recreation Park Service, Land Resource Division; the Department of Defense, Military Traffic Management Command; the Washington Public Utilities Commission; the Washington Department of Transportation; and the Chief Forest Service, U.S. Department of Agriculture was accomplished by mailing a copy thereof on October 17, 2002; (3) the environmental and historic reports were serviced upon the agencies identified in 49 C.F.R. § 1105.7(b) and the State Historic Preservation Offices on October 17, 2002; (4) service of notice upon the State Clearinghouses was accomplished by mailing a copy thereof on October 17, 2002; and (5) the publication requirements of 49 C.F.R. § 1105.12 have been complied with, to wit: publication of notice was accomplished on October 26, 2002 in The News Tribune, (affidavits of publication are attached).



Michael Smith  
Freeborn & Peters  
311 S. Wacker Dr. Suite 3000  
Chicago, Illinois 60606-6677  
Phone: (312) 360-6724  
Fax: (312) 360-6598

Date: January 7, 2003

AFFIDAVIT OF PUBLICATION  
STATE OF WASHINGTON  
COUNTY OF PIERCE

I, Kathryn Grubbs, being first duly sworn, on oath, says that she is the Legal clerk of The News Tribune, a daily newspaper, published in Tacoma, Pierce County, Washington, and of general circulation in said State, and having a daily circulation of over 128,700 copies. That said Newspaper is now and at all times hereinafter mentioned as a legal Newspaper as defined by the laws of the state, duly approved by the Superior Court of Pierce County, Washington. That the advertisement, of which the Attached is a printed copy as it was published in the regular issue of said Newspaper, was published 1 time(s), commencing on the 26TH day of OCTOBER 2002, and ending on the 26TH day of OCTOBER, 2002.

Ad number S8723950000.  
PRESTON GATES

*Kathryn Grubbs*  
Subscribed to and sworn before me on this  
2nd day of NOVEMBER, 2002  
*Stormy L. Gregory*  
NOTARY PUBLIC  
STATE OF WASHINGTON  
My commission expires 12/1/02



Ad # 8723950

Date 11/02/2002

Time 9:08 AM

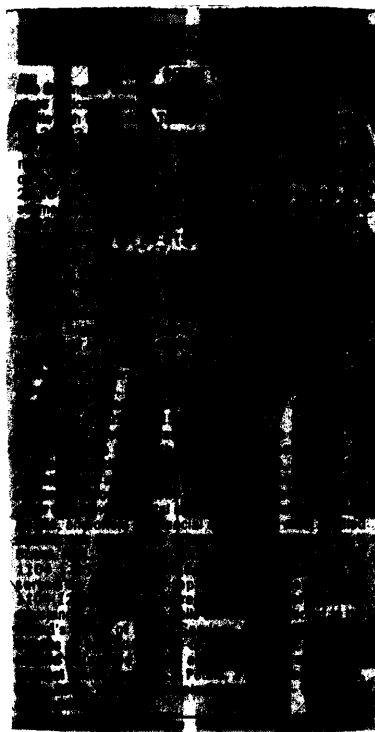
**NOTICE OF INTENT TO ABANDON**

The Burlington Northern and Santa Fe Railway Company gives notice that on or after November 7, 2002, it intends to file with the Surface Transportation Board, Washington, DC 20423, an abandonment notice of exemption under 49 CFR 1152 Subpart F -- Exempt Abandonments permitting the abandonment of or discontinuance of service on 0.24 miles of railroad line between railroad milepost 28.10 and 28.34 near McMillan, Washington, which line segment traverses through United States Postal Zip Code 98374 in Pierce County, Washington. The proceeding will be docketed as No. AB-6 (Sub-No. 397X).

The Board's Section of Environmental Analyses (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001 or by calling that office at 202-565-1538.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of the Secretary, 1925 K Street, N.W., Washington, DC 20423-0001. See 49 CFR 1104.1(a) and 1104.3(a), and one copy must be served on applicants' representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Services at 202-565-1592. Copies of any comments or requests for conditions should be served on the applicant's representative Michael Smith, Freeborn & Peters, 311 S. Wacker Drive, Suite 3000, Chicago, Illinois 60606-6677- telephone (312) 360-6724.

Ad shown is not actual print size



BEFORE THE  
SURFACE TRANSPORTATION BOARD

In the Matter of The  
Burlington Northern and Santa Fe  
Railway Company  
Notice of Exemption to Abandon  
Its Line of Railroad Between M.P.  
28.10 and M.P. 28.34 in McMillan,  
Washington

Docket No. AB-6  
(Sub No. 397X)

**ENVIRONMENTAL REPORT**

The following information is submitted to the Surface Transportation Board by The Burlington Northern and Santa Fe Railway Company (BNSF) in accordance with the Board's reporting requirements as set forth in 49 C.F.R. § 1105.7 for the purpose of assisting the Board's preparation of an environmental document regarding BNSF's Notice of Exemption for abandonment of its line between M.P. 28.10 and M.P. 28.34 in McMillan, Pierce County, Washington, total distance of 0.24 miles.

**(1) Proposed action and Alternatives:** Describe the proposed action, including commodities transported, the planned disposition (if any) of any railline and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

BNSF seeks to abandon and discontinue service of the line. A map of the line is attached as Exhibit A.

**(2) Transportation system:** Describe the effect of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

The proposed abandonment will have no affect on existing transportation systems or patterns as the line is out of service.

**(3) Land Use:**

(i) Based on consultation with local and/or regional planning agencies and/or review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

The proposed abandonment should be consistent with local land use plans. See Exhibit B, letter from Pierce County Parks and Recreation.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agriculture land.

The proposed abandonment will have no effect on prime farmland. See Exhibit C, letter from the Natural Resources Conservation Service.

(iii) If any action affects land or water uses within a designated coastal zone, include the coastal zone information required by § 1105.9

N/A

(iv) If the proposed action is abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10906 and explain why.

The proposed abandonment is suitable for alternative public use. See Exhibit B, letter from Pierce County Parks and Recreation.

**(4) Energy:**

(i) Describe the effect of the proposed action on transportation of energy.

To the best of BNSF's knowledge there are no undeveloped energy resources such as oil, natural gas or coal in the vicinity of this line.

(ii) Describe the effect of the proposed action on recyclable commodities.

This abandonment and discontinuance will not adversely affect movement or recovery of recyclable commodities as the line is out of service.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

This abandonment will not result in an increase or decrease in overall energy efficiency as the line is out of service.

(iv) If the proposed action will cause diversions from rail to motor carriage of more than:

(A) 1,000 rail carloads a year, or

(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in the energy consumption and show the data and methodology used to arrive at the figure given.

There will be no diversions of traffic because the line is out of service.

**(5) Air:**

(i) If the proposed action will result in either:

(A). An increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of the line effected by the proposed, or

No.

(B). An increase in rail yard activity of at least 100% (measured by carload activity), or

No.

(C). An average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions.

The action will not involve an increase in truck traffic of more than 10% or 50 vehicles per day on any affected road segment as the line is out of service.

(ii) If the proposed action affects a Class I or nonattainment area under the Clean Air Act, and will result in either:

(A) An increase in rail traffic of at least 50% (measured in gross ton miles annually) or an increase of at least three train a day on any segment of rail line, or

(B) An increase in rail yard activity of at least 20% (measured by carload activity), or

(C) An average increase in truck traffic or more than 10-% of the average daily traffic of 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by State implementation Plan. However, for a rail construction under 49 U.S.C. § 10901 (or 49 U.S.C. § 10505) or in a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

The proposed abandonment will not result in an increase of rail or truck traffic because the line is out of service.

(iii) If the transportation of ozone depleting materials (such as nitrogen oxide and from) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

This action will have no effect on transportation of ozone-depleting materials as the line is out of service.

**(6) Noise:** If any of the thresholds identified in item (5)(c) of this section are surpassed, state whether the proposed action will cause:

(i) An incremental increase in noise levels of three decibels Ldn or more,

N/A

(ii) An increase to a noise level of 76 decibels Ldn or greater. If so, identify sensitive receptors (e.g. schools, libraries, hospitals, residences, retirement communities and nursing homes) in the project area and quantify the noise increase for those receptors if the thresholds are surpassed.

N/A

**(7) Safety:**

(i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad crossings).

This abandonment should have no adverse effect on health or public safety. There are no public crossings and no private crossings. During salvage operations on the line, if any may be required, precautions will be taken to ensure public safety, and contractors will be required to satisfy all applicable health and safety laws and regulations.

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills, and the likelihood of and accidental release of hazardous materials.

Abandonment will not result in transportation of hazardous materials.

(iii) If there are any known hazardous waste site or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

To the best of BNSF's knowledge, there are no known hazardous waste sites or sites where there have been known hazardous spills on the right-of-way between M.P. 28.10 and M.P. 28.34.

**(8) Biological resources:**

(i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

The proposed abandonment is within close proximity of a bridge structure along the Puyallup River. The Puyallup River is considered a critical habitat that contains the Chinook salmon, *Onchorynchus Tshawytscha*, and the Bull Trout, *Salvelinus Confluentus*, both listed as threatened species. See Exhibit D, letter from the State of Washington Department of Fish and Wildlife. It is unlikely that the abandonment will have any adverse affects on threatened or endangered species. The abandonment should have little to no effects on the McMillan Bridge. The Washington Department of Fish and Wildlife has identified the Bald Eagle, *Haliaeetus Leucocephalus*, as a sensitive species that is located hear the proposed abandonment. See Exhibit E.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

The United States Department of the Interior, Bureau of Land Management has indicated that there are no federal wildlife sanctuaries or National or State parks that will be affected by the abandonment. See Exhibit F. According to the Washington Department of Natural Resources,



there are no wildlife sanctuaries, refuges state parks or state forests. See Exhibit G, e-mail from the Washington Department of Natural Resources.

**(9) Water:**

(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

The Burlington Northern and Santa Fe Railway Company does not anticipate any inconsistencies with any Federal, State or local water quality standards. The Washington Department of Ecology has been notified of the proposed abandonment and have not responded as of the date of this report. See Exhibit H.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under Section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and whether any designated wetlands or 100-year floodplains will be affected. Describe the effects.

Permits under Section 404 of the Clean Water Act are not required. See Exhibit I, e-mail from the U.S. Army Corps of Engineers, Seattle District. The area proposed for railroad abandonment appears to be located within a defined Area of Special Flood Hazard, Zone A4 and B (Puyallup River). Pierce County's Floodplain Management Regulations, Title 17A.50, also regulated B Zones as 100-year floodplains. Since the proposed abandonment does not involve grading activity, i.e., excavation, filling etc., a site development permit process will not be required. See Exhibit J, letter from Pierce County Department of Planning and Land Services.

(iii) State whether permits under Section 402 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.

According to Linda Matlock from the Stormwater Unit of the Water Quality Program at the Washington Department of Ecology, BNSF would be required to file for a construction stormwater permit if the abandonment is five or more acres. March 29, 2002 phone call from Linda Matlock. See also Exhibit K, information on General Stormwater Permit for Construction and Industrial Activities from the Washington Department of Ecology. The General Permit for stormwater discharges associated with construction activities requires application of technology-based stormwater management controls, or best management practices, for those construction activities which will disturb five or more acres of total land area. See Exhibit L, Construction Activities Fact Sheet for National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit for Stormwater Discharges Associated with Construction Activities from the Washington Department of Ecology at p. 4. In this case, BNSF does not anticipate five or more total acres being disturbed by the abandonment activities.

**(10) Proposed Mitigation:** Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

Any salvage operations that may result will be in accordance with BNSF's general practice of requiring its private contractors to comply with all federal, state and local laws

and regulations pertaining to the environment, including, but not limited to noise, air quality, water quality, and items of archaeological significance. The project itself should mitigate the environmental effects of reinstating active rail operations.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael Smith", written over a horizontal line.

Michael Smith  
Freeborn & Peters  
311 S. Wacker Dr. Suite 3000  
Chicago, Illinois 60606-6677  
Phone: (312) 360-6724  
Fax: (312) 360-6598

Date: January 7, 2003

BEFORE THE  
SURFACE TRANSPORTATION BOARD

In the Matter of The  
Burlington Northern and Santa Fe  
Railway Company  
Notice of Exemption to Abandon  
Its Line of Railroad Between  
M.P. 28.10 and M.P. 28.34 in  
McMillan, Washington

Docket No. AB-6  
(Sub No. 397X)

**HISTORICAL REPORT**

The following is submitted to the Surface Transportation Board by The Burlington Northern and Santa Fe Railway Company (BNSF) in accordance with the Board's reporting requirements set forth in 49 C.F.R. § 1105.8 for the purpose of assisting the Board's environmental and historical assessment regarding BNSF's Notice of Exemption to abandon its line of railroad between M.P.28.10 and M.P. 28.34 in McMillan, Pierce County, Washington, a total distance of 0.24 miles.

(1) A U.S.G.S. topographic map (or alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of the railroad structures that are 50 years old or older and are part of the proposed action;

One copy of a U.S.G.S. Topographical map has been provided to the Washington State Historical Society and one copy is being provided to the Surface Transportation Board's Section of the Environmental Analysis upon filing of this Report.

(2) A written description of the right-of-way (including approximate widths, to the extent known) and the topography and urban and/or rural characteristics of the surrounding area:

The McMillan Trackage is located in a suburban area approximately 10 miles from Tacoma, WA, which is a major metropolitan statistical area. McMillan is not an incorporated town but rather a railroad station. Most of the adjacent land in the McMillan area is farmland and suburban homes with some industrial business. The corridor is 400 feet wide. Pierce County has an extensive recreational trail system that connects on both the north and south limits of the McMillan Trackage. Pierce County's acquisition of this corridor through railbanking will allow Pierce County to tie together a major trail network. The general nature of the land adjacent to the trackage is flat.

(3) Good quality photographs (actual photographic prints, not photocopies) or railroad structures on the property that are 50 years old or older and of the immediately surrounding area;

There are no buildings or structures on the property or in the surrounding area that are 50 years old or older.

(4) The date(s) of construction of the structures, and the date(s) and extent of any major alterations, to the extent such information is known;

N/A

(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action:

The McMillan, WA right of way was acquired by an Act of Congress of July 2, 1864 to the Northern Pacific Railway Company, which merged into the Burlington Northern Railroad Company (BN) in 1970. BN merged in 1995 with The Atchison Topeka and Santa Fe Railway Company (ATSF) to become The Burlington Northern and Santa Fe Railway Company.

The McMillan, WA Trackage has been out of service for several years.

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is to be historic;

Documents in BNSF's possession concerning this abandonment may include alignment maps showing the right-of-way and/or station maps. Such documents are too large for practical reproduction in this report, but can be furnished upon request, if they are available.

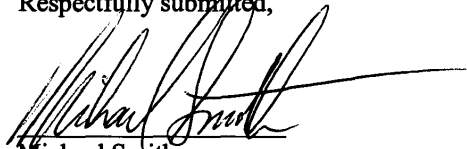
(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 C.F.R. § 60.4), and whether there is a likelihood of archaeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);

To the best of BNSF's knowledge, the proposed abandonment should have no appreciable effects on any known sites or properties listed, or eligible for listing in the National Register of Historic Places. S.R. 162 McMillian Bridge over the Puyallup River has been inventoried and archaeological site 45 PI 456 has been identified and located about 100 meters west of the right of way. See Exhibit M, letter from the State of Washington Office of Archaeology and Historic Preservation. The Washington State Office of Archaeology and Historic Preservation recommends that a survey for cultural resources be undertaken in the project vicinity. See Exhibit M.

(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archaeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.

BNSF is not aware of any known prior subsurface ground disturbance or fill or any other environmental conditions (naturally occurring or man-made) that might affect the recovery of archaeological resources.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Smith", with a long horizontal flourish extending to the right.

Michael Smith  
Freeborn & Peters  
311 S. Wacker Dr. Suite 3000  
Chicago, Illinois 60606-6677  
Phone: (312) 360-6724  
Fax: (312) 360-6598

Date: January 7, 2003

**CERTIFICATION PURSUANT TO 49 C.F.R.1105.7(c)**

The Burlington Northern and Santa Fe Railway Company ("BNSF") by and through its authorized representative, Michael Smith, certifies that on October 17, 2002, BNSF sent copies of the foregoing Environmental and Historical Reports by first class mail to the following agencies:

Ms. Victoria Rutson  
Chief, SEA  
Surface Transportation Board  
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Dr. Jeffery Koenings  
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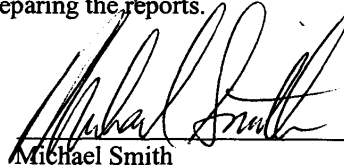
Megan White  
Water Quality Program Manager  
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U.S. EPA  
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1200 6th Avenue  
Seattle, WA 98101

The required cover letters (pursuant to 49 C.F.R. 1105.11) are attached hereto. BNSF has consulted with all appropriate agencies in preparing the reports.

A handwritten signature in black ink, appearing to read "Michael Smith", is written over a horizontal line.

Michael Smith  
Freeborn & Peters  
311 S. Wacker Dr. Suite 3000  
Chicago, Illinois 60606-6677  
Phone: (312) 360-6724  
Fax: (312) 360-6598

Date: January 7, 2003

A

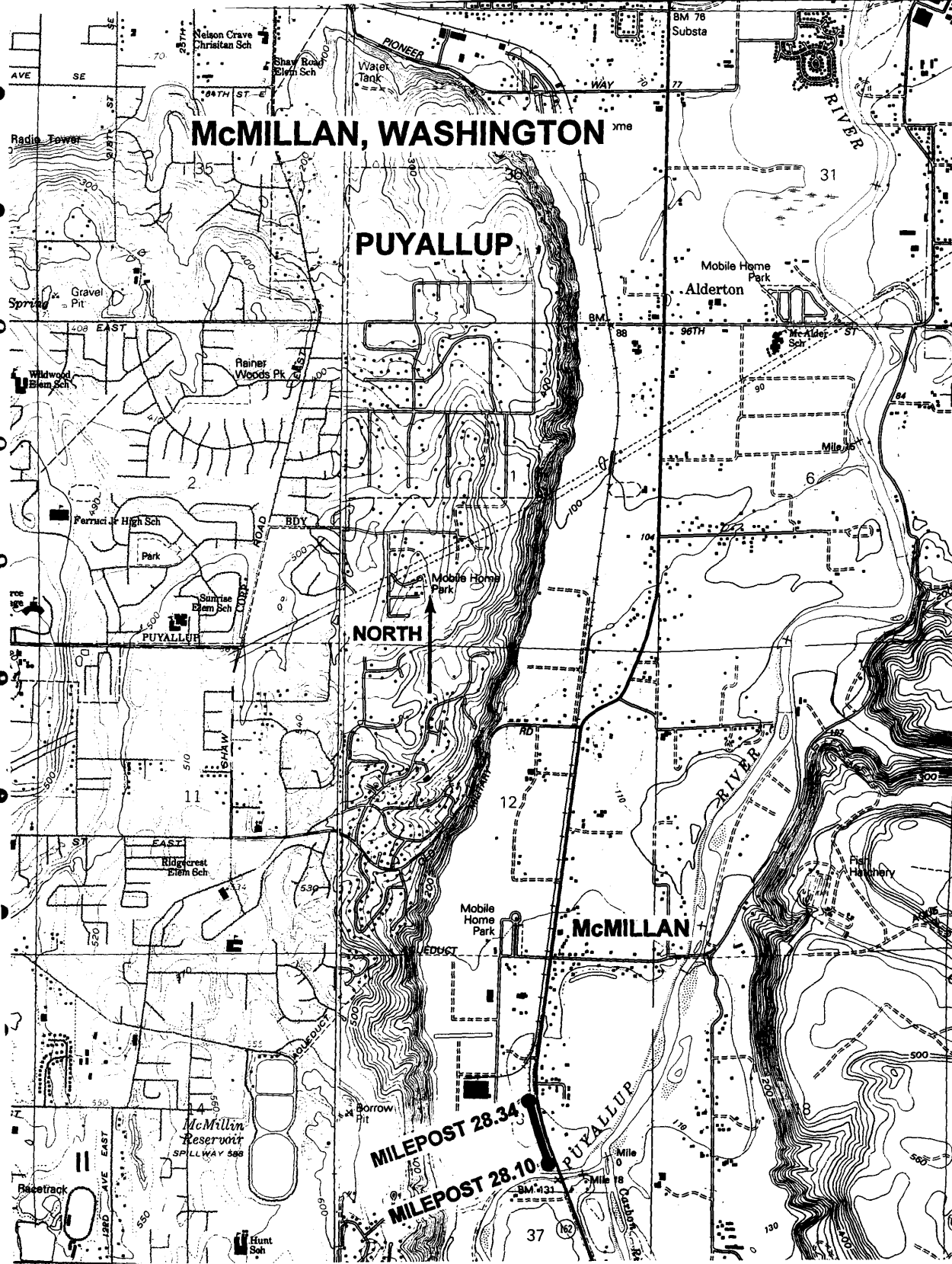
# McMILLAN, WASHINGTON

## PUYALLUP

NORTH

McMILLAN

MILEPOST 28.34  
MILEPOST 28.10



**B**



## Pierce County

### Parks and Recreation

9112 Lakewood Drive S.W., Suite 121  
Tacoma, Washington 98499-3998  
(253) 798-4176 • FAX (253) 582-7461

**JAN WOLCOTT**  
Director

May 21, 2001

Brian Nettles  
Litigation Clerk  
Freeborn & Peters  
311 South Wacker Drive  
Chicago, IL 60606-6677

RE: BNSF Abandonment in McMillin, WA,  
MP 28.10 to MP 28.34

Dear Mr. Nettles:

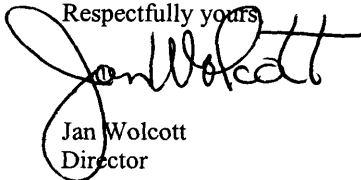
This letter responds to your letter of May 8, 2001 to Mr. Ladenburg, Pierce County Executive.

Pierce County anticipates preservation of MP 28.10 to MP 28.34 (as well as additional properties) as an extension of the Foothills Trail, an important commuter and recreational trail facility in Pierce County. Development of the line in question for trail purposes will contribute to connecting the Foothills Trail to Tacoma, a major county objective.

When BNSF initiates the abandonment proceeding suggested in your letter for the line in question, Pierce County anticipates requesting railbanking under 16 U.S.C. § 1247 (d). Pierce County understands that, if Pierce County requests railbanking, BNSF will consent to same.

Pierce County understands that the parcels comprising the line in question are former federally granted right of way. Pierce County has adopted local ordinances necessary for acquisition of the line for "public highway" purposes consistent with 43 U.S.C. §§ 912-913, as modified by other statutes. This is also consistent with preservation of the line for use in connection with the Foothills Trail.

Respectfully yours,



Jan Wolcott  
Director

a:\bnettlles.doc



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C





United States Department of Agriculture

**NATURAL  
RESOURCES  
CONSERVATION  
SERVICE**

1011 East Main, Ste 106  
Puyallup, WA 98372  
Ph: (253) 845-9272 ext. 108  
FAX: (253) 845-4569

November 21, 2001

Brian Nettles  
Freeborn & Peters  
311 South Wacker Drive  
Suite 3000  
Chicago, IL 60606-6677

Dear Mr. Nettles:

As per your letter dated November 1, 2001, I have reviewed the area of the proposed railroad line abandonment. The area is located in a Puyallup fine sandy loam soil map unit which is a prime farmland soil. Since the abandonment is limited to the railroad right of way there will be no effect on prime farmland.

Please contact me if you have any questions.

Respectfully,

A handwritten signature in cursive script, appearing to read "Charles Natsuhara".

Charles Natsuhara  
Resource Soil Scientist

---

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

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**D**



State of Washington  
**DEPARTMENT OF FISH AND WILDLIFE**

Region 6 Office: 48 Devonshire Road - Montesano, Washington 98563-9618 - (360) 249-4628

June 19, 2001

Freeborn & Peters, Attorneys at Law  
ATTENTION: Brian Nettles  
311 South Wacker Drive, Suite 3000  
Chicago, Illinois 60606-6677

Dear Mr. Nettles:

**SUBJECT: The Burlington Northern and Santa Fe Railway Company Abandonment in McMillan, Washington.**

The Washington Department of Fish and Wildlife (WDFW) has reviewed the above-referenced letter regarding the request for an evaluation of wildlife species and habitat near the proposed project site.

The project site appears to be located within close proximity of a bridge structure. It is WDFW's understanding that Pierce County is already converting this portion of rail segment to a trail. Issues regarding impacts to wildlife species and habitat would be addressed during the review process of this project.

WDFW would like to reiterate that the Puyallup River is considered critical habitat. Chinook salmon and bull trout, both listed as threatened species, can be found in this river system.

Thank you for the opportunity to provide these comments. If you have any questions, please contact me at (360) 249-4628.

Sincerely,

A handwritten signature in cursive script, reading "Danette L. Guy".

Danette L. Guy  
Habitat Biologist

E

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE - HABITATS AND SPECIES REPORT  
IN THE VICINITY OF T19R04E SECTION 13  
Report Date: December 10, 2001

This map contains the following species and/or habitat locations that are deemed sensitive by the Washington Department of Fish and Wildlife Sensitive Fish and Wildlife Policy.

PHS CODE/ SPPCODE	COMMON NAME	USE CODE	USE DESCRIPTION
HALE	BALD EAGLE	B	BREEDING OCCURRENCE

PHS POLYGON FORM LIST - CROSS REFERENCE REPORT  
IN THE VICINITY OF T19R04E SECTION 13

PHSPOLY#	FORM NUMBER/ PHS CODE*USE CODE
2	900000
	*-
3	903848
	UNOS*-
4	900000
	*-
5	902553
	RIPAR*-
6	902559
	WET*-
7	902560
	WET*-
8	903848
	UNOS*-
9	902553-903848
	RIPAR*-UNOS*-
10	902559-902564
	WET*-WAFO*RC-
11	903848
	UNOS*-
12	902568
	UNOS*-
13	902568
	UNOS*-
14	902559-902564
	WET*-WAFO*RC-
15	902564-902566-902568
	WAFO*RC-WET*-UNOS*-
16	902559-902564
	WET*-WAFO*RC-
17	902559-902564
	WET*-WAFO*RC-
18	902559
	WET*-
19	902559
	WET*-
20	902559
	WET*-
21	902559-902564-902568
	WET*-WAFO*RC-UNOS*-
22	902559
	WET*-
23	902560
	WET*-
24	902559
	WET*-
25	902560
	WET*-
26	902559
	WET*-
27	902560
	WET*-
28	902560
	WET*-
29	902578
	RIPAR*-
30	902579
	RIPAR*-
31	902560
	WET*-
32	900000
	*-
33	902560
	WET*-
34	902560
	WET*-
35	902058-902564
	WET*-WAFO*RC-
36	900000
	*-
37	902568
	UNOS*-

38 . 902552-902568  
 \* UNOS\*-UNOS\*-  
 39 902560  
 WET\*-  
 40 900000  
 \*-  
 41 902560  
 WET\*-  
 42 902560  
 WET\*-  
 43 900000  
 \*-

PHS POLYGON - SPECIES AND HABITAT LIST

PHS FORM#	PRIORITY	PHS CODE	COMMON NAME	USE CODE	USE DESCRIPTION
900,000					
902,058	YES	WET	WETLANDS		
902,552	YES	UNOS	URBAN NATURAL OPEN SPACE		
902,553	YES	RIPAR	RIPARIAN ZONES		
902,559	YES	WET	WETLANDS		
902,560	YES	WET	WETLANDS		
902,564	YES	WAFO	WATERFOWL CONCENTRATIONS	RC	REGULAR CONCENTRATION
902,566	YES	WET	WETLANDS		
902,568	YES	UNOS	URBAN NATURAL OPEN SPACE		
902,578	YES	RIPAR	RIPARIAN ZONES		
902,579	YES	RIPAR	RIPARIAN ZONES		
903,848	YES	UNOS	URBAN NATURAL OPEN SPACE		

Form number 900000 indicates presence of PHS is unknown or the area was not mapped. Form numbers 909998, 909997, or 909996 indicate compilation errors.

YES under the "PRIORITY" column indicates that the species or habitat is considered a priority and is on the Priority Habitats and Species List and/or the Species of Concern List.

WILDLIFE HERITAGE POINT - SPECIES LIST AND REPORT  
 IN THE VICINITY OF T19R04E SECTION 13

QUADPT	PRIORITY	SPPCODE	COMMON NAME	USE CODE	USE DESCRIPTION
4712222011	YES	HALE	BALD EAGLE	B	BREEDING OCCURRENCE

YES under the "PRIORITY" column indicates that the species or habitat is considered a priority and is on the Priority Habitats and Species List and/or the Species of Concern List.

quadpt: 4712222011 sppcode: HALE use: B name: BALD EAGLE  
 year: 1994 class: SA accuracy: C state status: ST fed status: FT  
 township - range - section: T19N R05E S07 SWOFNW occur#: 613 segno: 1  
 general description:  
 BALD EAGLE NEST 151 AVE CT APPROX. 300FT SOUTH OF END OF ROAD IN LARGE COTTON-  
 WOOD WITHIN APPROX. 3 YDS IN COTTONWOOD GROVE.

Note:

If known occurrences of spotted owls and marbled murrelets exist they will be displayed on the accompanying map, however, detailed information for them are not included in this report.

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE - PHS POLYGON REPORT  
Report Date: 12/10/2001

form: 902,058 species/habitat: WET species use: season: accuracy: 1  
sitename: UPPER PUYALLUP RIVER WETLANDS  
general description:  
WETLANDS ASSOCIATED WITH PUYALLUP RIVER ABOVE CONFLUENCE WITH CARBON RIVER. A MI  
X OF SOME RIVERINE, SCRUB SHRUB, OPEN WATER, EMERGENT, AND FORESTED WETLANDS.

source: NATIONAL WETLAND INVENTORY, 1988  
date: 88 code: GSMAP  
synopsis:  
DELINEATED WETLAND BOUNDARIES

source: NAUER, DON WDW LOCAL KNOWLEDGE OF AREA  
date: 04 91 code: PROF  
synopsis:  
NUMEROUS VISITS AND DRIVE BYS PROVIDED LAND USE AND VEGETATION TYPES

source: DNR ORTHOPHOTO MAPS, 1984  
date: 84 code: ORTHO  
synopsis:  
OBTAINED VEGETATION, COVER, AND LAND USE DATA.

form: 902,552 species/habitat: UNOS species use: season: accuracy: 1  
sitename: PUYALLUP STEEP OPEN SPACES  
general description:  
UNDEVELOPED STEEP SLOPES WITH NATIVE VEGETATION-UNSUITABLE FOR DEVELOPMENT BUT S  
TILL PROVIDE WILDLIFE HABITAT.

source: OBTAINED LAND USE INFORMATION  
date: 84 code: ORTHO  
synopsis:

source: VARIOUS GSMAPS, 1968 THROUGH 1984  
date: 68 code: GSMAP  
synopsis:  
DELINEATED STEEP SLOPES VIA TOPOGRAPHIC LINES.

source: NAUER, DON WDW; FIELD OBSERVATIONS AND LOCAL KNOWLEDGE  
date: 04 91 code: PROF  
synopsis:  
LATE SERAL STAND OF MIXED CONIFER WHICH PROVIDE HABITAT FOR VARIETY OF BIRD AND  
MAMMAL SPECIES. TOO STEEP FOR DESIREABLE DEVELOPMENT-MOST AREAS GROUND TRUTHED.

form: 902,553 species/habitat: RIPAR species use: season: accuracy: 1  
sitename: LOWER PUYALLUP RIPARIAN ZONES  
general description:  
LOWER PUYALLUP RIVER TRIBUTARY RIPARIAN ZONES INCLUDING HYLEBOS CREEK UNDEVELOPE  
D RIPARIAN AREAS PROVIDING GENERAL HABITAT FOR A VARIETY OF BIRDS AND MAMMALS, P  
ROTECTION OF LIMITED TROUT AND STEELHEAD HABITAT.

source: NATIONAL WETLANDS INVENTORY, 1988  
date: 88 code: GSMAP  
synopsis:  
HELPED DELINEATE STREAM CHANNELS

source: DNR ORTHOPHOTO 1984  
date: 04 91 code: ORTHO  
synopsis:  
OBTAINED LAND USE INFORMATION

source: NAUER, DON WDW NUMEROUS SITE VISITS AND LOCAL KNOWLEDGE OF AREA  
date: 04 91 code: PROF  
synopsis:  
UNDEVELOPED RIPARIAN VEGETATION PROVIDING GENERAL HABITAT FOR VARIETY OF BIRDS A  
ND MAMMALS, PROTECTION OF LIMITED TROUT AND STEELHEAD HABITAT.

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE - PHS POLYGON REPORT  
Report Date: 12/10/2001

form: 902,559 species/habitat: WET species use: season: accuracy: 1  
sitename: LOWER PUYALLUP RIVER VALLEY WETLANDS  
general description:  
LOWER PUYALLUP RIVER VALLEY WETLANDS

source: CITY OF SUMNER SHORELINE MASTER PLAN MAP, 1990  
date: 11 90 code: GSMAP  
synopsis:  
COLLECTION OF EITHER BROADLEAF-SHRUB OR FARMED, EMERGENT WETLAND AREAS GROUND CO  
NFIRMED IN MOST CASES-ORIGINAL SOURCE WAS NWI.

source: DNR ORTHOPHOTO MAPS, 1984  
date: 84 code: ORTHO  
synopsis:  
MOSTLY OPEN FARMED AREAS WITH SOME BROADLEAF-SHRUB AND EMERGENT AREAS INDICATED  
BY PHOTOS.

source: NAUER, DON WDW FIELD OBSERVATIONS  
date: 04 91 code: PROF  
synopsis:  
SOME COTTONWOOD SWAMPS WITH OPEN WATER AREAS AND FLOODED PASTURES. SEASONAL USE  
BY SMALL CONCENTRATIONS OF WATERFOWL-ALSO DEER AND RAPTOR USE.

form: 902,560 species/habitat: WET species use: season: accuracy: 1  
sitename: SOUTH PUYALLUP WETLANDS  
general description:  
POTHOLE WETLANDS IN SOUTH PUYALLUP AREA

source: NATIONAL WETLAND INVENTORY, 1988  
date: 88 code: GSMAP  
synopsis:  
AS DELINEATED ON NWI

source: DNR ORTHOPHOTO MAP, 1984  
date: 84 code: ORTHO  
synopsis:  
ISOLATED POTHOLE PONDS WITH SOME BROADLEAF, SHRUB-SCRUB AND OPEN WATER PONDING I  
NDICATED BY PHOTOS.

source: NAUER, DON WDW, FIELD OBSERVATIONS  
date: 04 91 code: PROF  
synopsis:  
OPEN WATER PROVIDES SOME SEASONAL WATERFOWL USE-IDEAL DEER, GROUSE, SMALL MAMMAL  
HABITAT WITH SCATTERED SNAGS DETERMINED BY SITE VISITS.

form: 902,564 species/habitat: WAFO species use: RC season: WS F accuracy: 1  
sitename: PIERCE CO. SMALL WATERFOWL CONC., NON FARM  
general description:  
SMALL WATERFOWL CONCENTRATION AREAS, NON AGRICULTURAL.

source: NAUER, DON KILDAHL, DILLMAN, LOU WDW; FIELD OBSERVATIONS  
date: 04 91 code: PROF  
synopsis:  
NUMEROUS SIGHTINGS OF WATERFOWL USE.

source: DNR ORTHOPHOTO MAPS, 1984  
date: 84 code: ORTHO  
synopsis:  
PHOTOS INDICATE BASIC VEGETATION AND NONAGRICULTURAL ACTIVITY.



WASHINGTON DEPARTMENT OF FISH AND WILDLIFE - PHS POLYGON REPORT  
Report Date: 12/10/2001

form: 902,566 species/habitat: WET species use: season: accuracy: 1  
sitename: FENNEL CREEK WETLANDS  
general description:  
NUMEROUS WETLANDS ASSOCIATED WITH FENNEL CREEK, SOME FORESTED, SOME RIPARIAN AND  
OLD ABANDONED BEAVER PONDS.

source: DNR ORTHOPHOTO MAPS, 1984  
date: 84 code: ORTHO  
synopsis:  
CONFIRMED LAND USE AND VEGETATION COVER.

source: NATIONAL WETLAND INVENTORY, 1988  
date: 88 code: GSMAP  
synopsis:  
DELINEATED WETLAND BOUNDARIES.

source: NAUER, DON WDW FIELD OBSERVATIONS AND LOCAL KNOWLEDGE  
date: 05 91 code: PROF  
synopsis:  
VEGETATION AND LAND USE INFORMATION OBTAINED.

form: 902,568 species/habitat: UNOS species use: season: accuracy: 1  
sitename: PIERCE COUNTY OPEN SPACE  
general description:  
LANDS CURRENTLY IN NATURAL VEGETATION WHICH PROVIDE WILDLIFE HABITAT. PRIMARILY  
UNDEVELOPED FOREST LAND WITH SOME OPEN RANGE AREAS, WETLANDS, AND RIPARIAN HABIT  
AT.

source: DNR ORTHOPHOTO MAPS, 1984  
date: 84 code: ORTHO  
synopsis:  
DETERMINED LAND USE AND VEGETATION TYPES.

source: NAUER, DON WDW  
date: 04 91 code: PROF  
synopsis:  
RECOGNIZED LARGE TRACTS OF UNDEVELOPED LAND WITH MODERATE TO HIGH WILDLIFE HABIT  
AT VALUE.

form: 902,578 species/habitat: RIPAR species use: season: accuracy: 0  
sitename: LITTLE PUYALLUP RIPARIAN ZONE  
general description:  
RIPARIAN HABITAT ALONG LITTLE PUYALLUP RIVER-ABOVE CONFLUENCE WITH CARBON RIVER  
INCLUDES RIVERINE WETLAND IN USUAL FLOODPLAIN.

source: NATIONAL WETLAND INVENTORY, 1988  
date: 88 code: GSMAP  
synopsis:  
DELINEATED STREAM CHANNELS.

source: DNR ORTHOPHOTO MAPS, 1984  
date: 84 code: ORTHO  
synopsis:  
DETERMINED CRITICAL RIPARIAN VEGETATION.

source: NAUER, DON WDW, LOCAL KNOWLEDGE OF AREA  
date: 04 91 code: PROF  
synopsis:  
NUMEROUS SITE VISITS AND FIELD OBSERVATIONS FROM STEELHEAD SPAWNING SURVEYS.

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE - PHS POLYGON REPORT  
Report Date: 12/10/2001

form: 902,579 species/habitat: RIPAR species use: season: accuracy: 1  
sitename: CARBON RIVER RIPARIAN ZONE  
general description:  
RIPARIAN HABITAT ALONG CARBON RIVER CONTAINS SOME RIVERINE WETLANDS WITHIN USUAL  
FLOOD PLAIN. IMPORTANT WILDLIFE AND FISH HABITAT-INCLUDES VARIOUS TRIBUTARIES.

source: DNR ORTHOPHOTO MAPS, 1984  
date: 04 91 code: ORTHO  
synopsis:  
CONFIRMED VEGETATION AND LAND USE INFORMATION.

source: NATIONAL WETLAND INVENTORY, 1988  
date: 88 code: GSMAP  
synopsis:  
HELPED DELINEATE STREAM CHANNELS.

source: NAUER, DON WDW, FIELD OBSERVATIONS  
date: 04 91 code: PROF  
synopsis:  
ROUTINE STEELHEAD SPAWNER SURVEYS PROVIDE WEALTH OF INFORMATION ABOUT STREAM AND  
CRITICAL RIPARIAN HABITAT.

form: 903,848 species/habitat: UNOS species use: season: accuracy: 1  
sitename: CARBON RIVER OPEN SPACE  
general description:  
STEEP SLOPES ALONG THE VALLEY TERRACE COVERED WITH NATIVE MIXED FOREST.

source: DON NAUER 1990; PERSONAL OBSERVATIONS.  
date: 90 code: DRIVE  
synopsis:  
HABITAT BIOLOGIST NAUER LIVES AND WORKS IN THIS AREA. DRIVES BY THESE AREAS  
FREQUENTLY.

source: TED MULLER WDFW  
date: 06 95 code: PROF  
synopsis:  
MAP EDIT.

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE  
PRIORITY ANADROMOUS AND RESIDENT FISH PRESENCE REPORT FROM THE STREAMNET DATABASE  
IN THE VICINITY OF T19R04E SECTION 13  
Report Date: December 10, 2001

PRIORITY ANADROMOUS FISH PRESENCE

CODE	COMMON NAME	STREAM NAME	STREAM LLID	RECORD DATE	SOURCE
CHUM	Chum Salmon	Canyonfalls Creek	1222193471508	06-30-97	R. Egan, WDFW, R. Ladley, Puyallup Fish
COHO	Coho Salmon	Canyonfalls Creek	1222193471508	07-17-97	C. Baransky, WDFW, R. Ladley, Puyallup Fi
STWI	Winter Steelhead	Canyonfalls Creek	1222193471508	07-16-97	T. Cropp, WDFW, R. Ladley, Puyallup Fishe
CHFA	Fall Chinook	Carbon River	1222316471303	07-16-97	C. Smith, WDFW, R. Ladley, Puyallup Fishe
CHUM	Chum Salmon	Carbon River	1222316471303	06-30-97	R. Egan, WDFW, R. Ladley, Puyallup Fish
COHO	Coho Salmon	Carbon River	1222316471303	07-17-97	C. Baransky, WDFW, R. Ladley, Puyallup Fi
PINK	Pink Salmon	Carbon River	1222316471303	07-02-97	R. Egan, WDFW, R. Ladley, Puyallup Fisher
SOCK	Sockeye Salmon	Carbon River	1222316471303	07-07-97	R. Egan, WDFW, R. Ladley, Puyallup Fisher
STSU	Summer Steelhead	Carbon River	1222316471303	07-16-97	T. Cropp, WDFW, R. Ladley, Puyallup Fishe
STWI	Winter Steelhead	Carbon River	1222316471303	07-16-97	T. Cropp, WDFW, R. Ladley, Puyallup Fishe
CHFA	Fall Chinook	Fennel Creek	1222121471559	07-16-97	C. Smith, WDFW, R. Ladley, Puyallup Fishe
CHUM	Chum Salmon	Fennel Creek	1222121471559	06-30-97	R. Egan, WDFW, R. Ladley, Puyallup Fisher
COHO	Coho Salmon	Fennel Creek	1222121471559	07-17-97	C. Baransky, WDFW, R. Ladley, Puyallup Fi
PINK	Pink Salmon	Fennel Creek	1222121471559	07-02-97	R. Egan, WDFW, R. Ladley, Puyallup Fisher
STWI	Winter Steelhead	Fennel Creek	1222121471559	07-16-97	T. Cropp, WDFW, R. Ladley, Puyallup Fishe
CHFA	Fall Chinook	Puyallup River	1224252472685	07-16-97	C. Smith, WDFW, R. Ladley, Puyallup Fisher
CHUM	Chum Salmon	Puyallup River	1224252472685	06-30-97	R. Egan, WDFW, R. Ladley, Puyallup Fisher
COHO	Coho Salmon	Puyallup River	1224252472685	07-17-97	C. Baransky, WDFW, R. Ladley, Puyallup Fi
PINK	Pink Salmon	Puyallup River	1224252472685	07-02-97	R. Egan, WDFW, R. Ladley, Puyallup Fisher
SOCK	Sockeye Salmon	Puyallup River	1224252472685	07-07-97	R. Egan, WDFW, R. Ladley, Puyallup Fisher
STSU	Summer Steelhead	Puyallup River	1224252472685	07-16-97	T. Cropp, WDFW, R. Ladley, Puyallup Fishe
STWI	Winter Steelhead	Puyallup River	1224252472685	07-16-97	T. Cropp, WDFW, R. Ladley, Puyallup Fishe
COHO	Coho Salmon	Stream name(s) not in database	1222144471639	07-17-97	C. Baransky, WDFW, R. Ladley, Puyallup Fi
COHO	Coho Salmon	Stream name(s) not in database	1222381471089	07-17-97	C. Baransky, WDFW, R. Ladley, Puyallup Fi

PRIORITY RESIDENT FISH PRESENCE

CODE	COMMON NAME	STREAM NAME	STREAM LLID	RECORD DATE	SOURCE
CCT	Resident Cutthroat	Carbon River	1222316471303	07-15-97	WDFW Staff
CCT	Resident Cutthroat	Fennel Creek	1222121471559	07-15-97	WDFW Staff
CCT	Resident Cutthroat	Stream name(s) not in database	1222381471089	07-15-97	WDFW Staff
DBT	Dolly Varden/Bull Trout	Carbon River	1222316471303	07-29-01	Jay Hunter, WDFW
DBT	Dolly Varden/Bull Trout	Puyallup River	1224252472685	07-29-01	Jay Hunter, WDFW

The fish information in this report only includes information that Washington Department of Fish and Wildlife (WDFW) maintains in a central computer database. This information only documents the location of important fish resources to the best of our knowledge. It is not a complete inventory of the fish species in the state. Fish are identified as priority by WDFW if they meet one of three criteria as listed in the Priority Habitats and Species List. The list is available by contacting WDFW Priority Habitats and Species section at (360)902-2543 or it is available on our web site at <http://www.wa.gov/wdfw/hab/phspage.htm>. To insure appropriate use of this information users are encouraged to consult with WDFW biologists.

**MAP WILL BE SCANNED  
AT A LATER DATE**

F



## United States Department of the Interior

### BUREAU OF LAND MANAGEMENT

Spokane District Office  
1103 N. Fancher  
Spokane, Washington 99212-1275

IN REPLY REFER TO:

(509) 536-1200

2840 (130)

May 18, 2001

Brain Nettles  
Freeborn & Peters Attorneys at Law  
311 South Wacker Drive, Suite 3000  
Chicago, IL 60606-6677

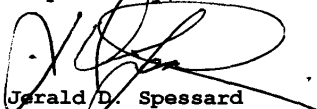
RE: BNSF abandonment at McMillan

Dear Mr. Nettles:

The Bureau of Land Management administers no Public Domain lands in Pierce County.

I am doubtful that there are any federal wildlife sanctuaries or refuges in the immediate area as it is rather urbanized, however I can not confirm that. The Seattle telephone book does not have a listing for the U. S. Fish & Wildlife office; I suggest checking their web site for the nearest regional office, probably Portland, Oregon. The National Marine Fisheries Service is located at 2725 Mountain Lake Boulevard East, Seattle, WA 98112; (???) 860-3200. The Washington Department of Natural Resources (DNR) (forests), South Puget Sound Region Office, can be reached at (360)825-1631. The Washington State Parks and Recreation Commission's Headquarters at Olympia may be reached by calling (360)902-8500.

Respectfully,

  
Gerald D. Spessard  
Realty Specialist

G

**Nettles, Brian**

---

**From:** WALT PULLIAM [walt.pulliam@wadnr.gov]  
**Sent:** Wednesday, March 20, 2002 4:01 PM  
**To:** bnettles@freebornpeters.com  
**Subject:** BNSF Closure South of Seattle

Mr. Nettles,  
I appreciate your phone response that an email is sufficient documentation for your purposes.

Regarding the .24 mile closure of BNSF track near McMillan, WA:

- 1) I have made a search of our data base (TRAX) that is used for similar requests. The search indicated that the types of areas you listed are not present within a mile radius.
- 2) Interviews with several DNR employees who work in the area indicates the same.
- 3) Interviews with two DNR employees who live close to the site indicates the same.

If I can be of further help please contact me at 360.825.1631 or at my email address.

Walt Pulliam



H

## Freeborn & Peters

May 8, 2001

Megan White  
Water Quality Program Manager  
Department of Ecology  
P.O. Box 47600  
Olympia, Washington 98504-7600

*Attorneys at Law*

311 South Wacker Drive  
Suite 3000  
Chicago, Illinois  
60606-6677  
Tel 312.360.6000

Brian Nettles  
Litigation Clerk  
Direct 312.360.6336  
Fax 312.360.6596  
bnettl@  
freebornpeters.com

*Chicago*

*Springfield*

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment  
between Tolna and Hamar, North Dakota***

Dear Ms. White:

The Burlington Northern and Santa Fe Railway Company ("BNSF") plans to file an exemption to abandon its line of railroad from Milepost 28.10 to Milepost 28.34 in McMillan, Washington, a distance of .24 miles in the near future.

As part of the environmental report BNSF needs to know whether or not this action will be consistent, with Federal, State or local water quality standards. Also, please state whether or not Section 402 and/or 404 permits are required as a result of the proposed abandonment.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact. No placement of dredge or fill material in any inland waterways is anticipated to result from abandonment and/or salvage.

For your reference I have enclosed a map of the above referenced railroad line. Please provide this information by June 5, 2001. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn  
Enclosure

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**Nettles, Brian**

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**From:** Gossett, Edwin J NWS [Edwin.J.Gossett@NWS02.usace.army.mil]  
**Sent:** Tuesday, May 22, 2001 1:22 PM  
**To:** 'bnettles@freebornpeters.com'  
**Subject:** BNSFRR in McMillan, WA

Mr. Nettles, in response to your letter to me dated May 8, 2001, BNSFRR will not need any permit from the Corps of Engineers to abandon the railroad line between Mileposts 28.10 and 28.34 in McMillan, Washington, as long as the Company does not place fill into wetlands or impact other waters of the United States. If wetlands or waters are impacted, a Corps permit could be necessary.

Jack Gossett  
US Army Corps of Engineers  
P.O. Box 3755  
Seattle WA 98124-2255  
206 764-6902 Voice  
206 764-6602 FAX  
edwin.j.gossett@nws.usace.army.mil  
22 May 2001

J



**Pierce County**

**Department of Planning and Land Services**

**CHUCK KLEEGERG**  
Director

2401 South 35th Street  
Tacoma, Washington 98409-7460  
(253) 798-7200 • FAX (253) 798-3131

November 20, 2001

Mr. Brian Nettles  
Freeborn & Peters  
Attorneys at Law  
311 South Wacker Drive, Suite 3000  
Chicago, IL 60606-6677

Subj: Response to Letter Dated November 6, 2001, for Floodplain Information, FIRM Panel No. 363

Dear Mr. Nettles:

The Pierce County Development Engineering Section of the Planning and Land Services Department has received your letter dated November 6, 2001, and has the following response:

- The area proposed for railroad abandonment appears to be located within a defined Area of Special Flood Hazard, Zone A4 and B (Puyallup River). Pierce County's Floodplain Management Regulations, Title 17A.50, also regulates B Zones as 100-year floodplains (see attached Flood Insurance Rate Map Panel No. 363).

Based on your description of the abandonment proposal, which does not include grading activity, i.e., excavation, filling etc., a site development permit process will not be required.

Should you have further questions regarding this matter, please contact me at (253) 798-3234.

Sincerely,

RONALD J. BRIDGMAN  
Development Engineer

RJB:cs

cc: File

M12.DOC



Printed on recycled paper

**MAP WILL BE SCANNED  
AT A LATER DATE**

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## General Stormwater Permit For Construction and Industrial Activities

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### On this page you will find:

[Reissuing the Construction and Industrial Stormwater General Permits](#)

[Who Should Apply For Construction Permit](#) [Who Should Apply For Industrial Permit](#)

[Download a Permit Application](#)

[Public Notice Requirements](#)

[Download Permit/Fact Sheet](#)

[Additional Stormwater Information](#)

[Notice of Termination](#)

[Who To Contact For Assistance](#)

[Transferring Ownership](#)

[Waters Subject to Partial Stay -  
Construction Permit](#)

**See Also:** Information on the [reissuing of the construction and industrial stormwater general permits](#) (includes information on the appeal of the current permits).

### Who Needs Construction Stormwater Permit Coverage?

#### Coverage of construction activities is not required if:

- Construction site is less than 5 acres (currently exempt).
- You are able to retain or infiltrate all the stormwater on site (for both industrial and construction activity), a permit is not required.
- For projects on Federal or Tribal land (Contact the Environmental Protection Agency's Region X Office in Seattle).

#### Coverage of construction activities is require if:

A permit is required for all soil disturbing activities (including grading, stump removal, demolition), where 5 or more acres will be disturbed, and have a discharge of stormwater to a receiving water (e.g., wetlands, creeks, unnamed creeks, rivers, marine waters, ditches, estuaries), and/or storm drains that discharge to a receiving water. If you plan on retaining all stormwater on site, but detention facilities need to be constructed to retain the stormwater, permit coverage is required. Browse Ecology's *Construction Booklet* for more information.

If you are applying for coverage under the construction stormwater general permit you may want to determine if your project is subject to the partial stay of

this permit. On August 29, 2001, the Pollution Control Hearings Board issued a partial stay of the construction stormwater general permit. This partial stay applied to waters listed under Section 303(d) of the Clean Water Act and waters subject to Total Maximum Daily Load determinations. [Click here for additional information.](#)

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### Industrial Activities that Require a Stormwater Permit

Permit coverage is required for industrial facilities that have specific Standard Industrial Classification (SIC) codes, if they have a discharge of stormwater from their industrial areas to a receiving water of the state, or to storm drains that discharge to a receiving water. Regardless of the SIC code, some industries may be required to seek permit coverage for areas of their industrial site that have a potential or are causing an impact to receiving waters. No permit is required if you treat and retain all the stormwater on site (discharge to ground). If you discharge all the stormwater to a Combined Sewer (which goes to the wastewater treatment plant), you are not required to apply for coverage. Check out Ecology's *Industrial Booklet* for SIC codes and more details.

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### Download a Permit Application

Do you need a construction or industrial stormwater permit application? Select and click on the application you need. Instructions are included. Mail the completed application(s) to:

Linda Matlock  
Water Quality Program, Stormwater Unit  
PO Box 47696  
Olympia, WA 98504-7696

Microsoft WORD Format	Adobe PDF Format
Industrial Application Form and Instructions	
<a href="#">INDUSTRIAL Application Form</a>	<a href="#">INDUSTRIAL Application Form</a>
<a href="#">INSTRUCTIONS for Completing Industrial Application Form</a>	<a href="#">INSTRUCTIONS for Completing Industrial Application Form</a>
Construction Application Form and Instructions	
<a href="#">CONSTRUCTION Application Form</a>	<a href="#">CONSTRUCTION Application Form</a>
<a href="#">INSTRUCTIONS for Completing Construction Application Form</a>	<a href="#">INSTRUCTIONS for Completing Construction Application Form</a>
MS WORD format provides the	The application is also provided in

application as a "form" document. Use the F11 key on your keyboard to move from space to space (the tab key does not work as well). Be aware that when the application form is sent to some printers, the format may change automatically. If you are not able to use this format, viewers or converters should be available from Microsoft or from the home page of your word processor if you are not using WORD. Otherwise, use the PDF format.

**Adobe Acrobat "PDF" format.** This format will allow you to print out the application and then fill it in manually. The form should print out correctly, regardless of the type of printer you have.

**Adobe Acrobat Reader:** If you do not have the free Acrobat Reader installed you may download it from this site.

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## Permit/Fact Sheet

These downloads require Adobe Acrobat Reader to view: If you do not have the free Acrobat Reader installed you may download it from this site. 

The **Construction Stormwater General Permit** and fact sheet are available for downloading. These documents are for reference purposes.. Applicants for coverage under the general permit will receive a signed copy of the permit when coverage is issued.

- [Construction Stormwater Permit](#)
- [Construction Stormwater Fact Sheet](#)

The **Industrial Stormwater General Permit** and fact sheet are available for downloading. These documents are for reference purposes.. Applicants for coverage under the general permit will receive a signed copy of the permit when coverage is issued.

- [Industrial Stormwater Permit](#)
- [Industrial Stormwater Fact Sheet](#)

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## Public Notice

Part of the application process for construction permits (and new industrial facilities) is to publish a public notice in a newspaper that has a distribution in the area of the proposed site. The notice is reviewed by Ecology before being published. You may fax a copy of the draft notice and application to Linda Matlock for review. The fax number is (360) 407-6426.

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## Questions on the Process?

If you have questions or need assistance with drafting the public notice or completing the applications, contact Linda Matlock at (360) 407-6437.

There is NO application fee. A permit fee billing statement will be mailed to the person designated in the billing section on the application after the permit has been issued. A permit will not be issued any sooner than 31 days from the second public notice date.

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## More Stormwater Guidance Information Available:

Call Ecology's stormwater request line at (360) 407-7156 to request a copy of the permits, a sample public notice, industrial and construction booklets mentioned above, guidance for auto recyclers, log yard operations, vehicle washing, and the guidance manual for developing a stormwater pollution prevention plan (SWPPP) for industrial facilities.

Ecology has a stormwater guidance manual that is undergoing revision. Local governments and businesses statewide use the manual to help design their stormwater programs. The manual is useful for anyone needing guidance on sediment and erosion control for construction sites. Operators, or engineers, representing industrial facilities will benefit from the technical volumes. You may select individual volumes or the entire set. The original 1992 version is still the "official" version and may be purchased from the West Olympia branch of Kinko's. Their phone number there is (360)943-4993, FAX is (360) 943-5354.

The revised version is expected to be in final form by August 2000. Currently the first draft is available in five separate volumes (700+ pages total). The draft version may be purchased or downloaded. The links below provide further information on each volume. Look for "online availability" to download the document or "print availability" to purchase the document.

- [Volume I - Minimum Technical Requirements](#)
- [Volume II - Construction Stormwater Pollution Prevention](#)
- [Volume III - Hydrologic Analysis and Flow Control Design](#)
- [Volume IV - Source Control BMPs](#)
- [Volume V - Runoff Treatment BMPs](#)

Ecology has also prepared a guidance document for developing a [Stormwater Pollution Prevention Plan](#) for industrial facilities. Click on the link to obtain this document. (available online as a downloadable pdf document or a printed copy may be ordered)

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### **Transfer Ownership of the Stormwater Permits:**

It is possible to transfer the ownership of the permits if the current owner is in compliance with their permit. For industrial facilities, the new owner must continue with the same type of operation. Contact Linda Matlock at (360) 407-6437 for guidance and the correct forms to complete.

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**Notice of Termination Request Forms** - These forms are provided in Adobe Acrobat format (pdf). If you do not have the free Acrobat Reader installed you may download it from this site. 

Click on [Notice of Termination for Construction Activity](#) to download the request form and instructions. Note: Do NOT submit the termination request until the entire site has been stabilized (grass and other landscaping established and all paving complete). A final billing statement will be mailed after Ecology receives your completed termination request.

Click on [Notice of Termination for Industrial Activity](#) to download a copy of the request form and instructions. Operators of "light" industrial facilities may request termination of their permit when all exposed industrial areas have been eliminated or the facility has ceased operation. All other industrial facilities must retain permit coverage until they cease operation and the site has been cleared of materials, equipment, and debris, or they relocate to a new location.

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### **Reissuing the Construction and Industrial General Permits**

At this time Ecology intends to reissue the Construction Stormwater General Permit and the Industrial Stormwater General Permit "as-is" in order to have these permits renewed when the current permits expire. Ecology will continue to work on these permits and issue revised permits after a full consideration of permit issues. For more information on the proposed schedule, [click here](#).

### **Interested In The Reissue Process?**

Individuals, companies, government agencies, and organizations with an interest in one or both of these permits and who want to be involved with the process are invited to join the *Interested Parties* list. This group will be informed of significant events throughout this process and will be invited to submit their comments and suggestions. Email Poppy Carre, [poca461@ecy.wa.gov](mailto:poca461@ecy.wa.gov) to sign up. Submit the following information:

Add To (required): Industrial - Construction - Both Lists  
Name (required):  
Title (optional):  
Organization/Company (optional):  
Mailing Address (US Postal - required):  
Telephone Number (optional):  
Fax Phone Number (optional):  
Email Address (if different from sending information):  
(if you have a construction or industrial stormwater permit) Permit  
Number:

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[For more information](#)

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[Go To Water Quality Home Page](#)

Last Update: January 10, 2000

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# **CONSTRUCTION ACTIVITIES FACT SHEET**

**For National Pollutant Discharge Elimination System (NPDES)  
and State Waste Discharge General Permit  
For  
Stormwater Discharges Associated With  
Construction Activities**



10/04/00



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## **Public Involvement Opportunities**

### **Announcement of Intent to Reissue:**

On May 10, 2000, Ecology sent a letter to permit holders and interested parties informing them of the intent to reissue the construction stormwater general permit as-is, without change to existing permit requirements. The letter outlined the process and solicited comments on the proposal. A return postcard was also included and those that returned the card were added to the mailing list of parties that wanted ongoing updates on the permitting process. Ecology also announced its intent in the agency newsletter, *Confluence*.

### **Public Workshops/ Public Hearings/Public Comment:**

Ecology has tentatively determined to reissue the construction stormwater general permit to construction activities as identified in the permit, Special Condition S2. **Permit Coverage.** The proposed permit contains conditions and requirements as described in the rest of this fact sheet. These conditions and requirements have not been changed from the 1995 permit (as modified in 1998).

Ecology will publish a Public Notice of Draft (PNOD) on August 2, 2000 in the State Register, the Spokesman Review, the Seattle Daily Journal of Commerce, the Daily Olympian, and the Yakima Herald Republic to inform the public that the draft permit and fact sheet are available for review. The notice will also be mailed to all parties identified above as interested parties. Interested persons are invited to submit written comments regarding the draft permit. The draft permit, fact sheet, and related documents are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. weekdays, by appointment, at Ecology's regional offices listed below. Written comments should be mailed to:

Keith Johnson  
Water Quality Program  
Department of Ecology  
PO Box 47600  
Olympia, WA 98504-7600

Ecology will also conduct a workshop and public hearing at two locations in the state. The first workshop/hearing will be held at Ecology's Eastern Regional Office in Spokane on September 7 beginning at 1:30 p.m. The second workshop/hearing will be held at Ecology's Northwest Regional Office in Bellevue on September 12 beginning at 1:30 p.m. Any interested party may comment on the draft permit or testify at a public hearing on this draft permit. Written comments must be postmarked no later than midnight September 14, 2000 and sent to the address above. Public notice regarding the hearing will be circulated at least thirty (30) days in advance of the hearing. People expressing an interest in this permit will be mailed an individual notice of hearing (WAC 173-220-100).

Comments should reference specific text followed by proposed modification or concern when possible. Comments may address technical issues, accuracy and completeness of information, the scope of the facility's proposed coverage, adequacy of environmental protection, permit conditions, or any other concern that would result from issuance of this permit.

Ecology will consider all oral testimony provided at the public hearings and all written comments postmarked by midnight, Thursday, September 14, 2000. Ecology's response to all significant comments will be available upon request and mailed directly to people expressing an interest in this permit.

Further information may be obtained from Ecology by telephone, (360) 407-6442, or by writing to the address listed above.

The permit and fact sheet are available at Ecology's regional offices:

**Southwest Regional Office**

Water Quality Program  
300 Desmond Drive  
Lacey, Washington  
Phone: (360) 407-6279

**Northwest Regional Office**

Water Quality Program  
3190 - 160<sup>th</sup> Avenue SE  
Bellevue, Washington  
Phone: (425) 649-7201

**Central Regional Office**

Water Quality Program  
15 West Yakima Avenue, Suite 200  
Yakima, Washington  
Phone: (509) 457-7148

**Eastern Regional Office**

Water Quality Program  
N. 4601 Monroe, Suite 202  
Spokane, Washington  
Phone: (509) 456-6310

## Background

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act) was amended to provide that the discharge of any pollutants to waters of the United States from any point source is unlawful, unless the discharge is in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. NPDES permits are issued by the United States Environmental Protection Agency (USEPA), or by state agencies which have been delegated NPDES permit authority by USEPA. Washington is a state that has been delegated this authority.

In 1987, Congress added section 402(p) to the Clean Water Act to establish a comprehensive framework for addressing municipal and industrial stormwater discharges under the NPDES permit program. Section 402(p)(4) of the Clean Water Act clarifies the requirement for USEPA and delegated state agencies to issue NPDES permits for stormwater discharges associated with industrial activity.

On November 16, 1990 (55 FR 47990), USEPA published final regulations on stormwater. (For purposes of this permit, Ecology has defined stormwater as rainfall and snowmelt runoff.) Additional rules related to stormwater permitting were published on April 2, 1992 (57 FR 11394). The goals of the stormwater regulations are to:

- Stop the illegal discharge of waste waters and other pollutants into storm drains.
- Reduce the amount of pollutants washed off in stormwater discharges.
- Establish a permit system for stormwater discharged by municipalities over 100,000 in population.
- Establish a permit system for stormwater discharged from industrial and construction sites.
- Eliminate water quality standards violations caused by stormwater discharges.

The federal regulations require an NPDES permit for listed industrial facilities and those construction activities which will disturb five or more acres of land, that discharge "stormwater associated with industrial activities" directly to surface waters, or indirectly through municipal storm drains. The regulations include a definition of "stormwater associated with industrial activity," and a listing of application requirements for stormwater permits.

Ecology issued its baseline stormwater general permit on November 18, 1992 which covered industrial and construction activities. When reissued in 1995, Ecology decided to take a limited approach due to time limitations and uncertainties on future stormwater permitting strategy. The minimal approach included issuing separate permits for industrial and construction activities, increasing the permit cycle to five years, and excluding mandatory effluent limits and sampling and analysis. Ecology did decide to require compliance with surface water, ground water and sediment standards for stormwater discharges from construction sites. Ecology considered the input of an advisory committee in developing the 1995 baseline general permit for stormwater discharges from industrial and construction activities. Advisory committee members were selected by Ecology from a list of volunteers. The committee included 36 representatives of small and large industries, consultants, environmental organizations, city and county governments, state agencies, business associations, and special purpose districts. Ecology issued the Construction Stormwater General Permit on November 18, 1995.

Based upon federal legislation, the 1995 permit exempted municipal entities under 100,000 population from having to obtain coverage for construction projects that they owned or operated. The permit was appealed based on the argument that it would not adequately protect water quality. In its decision, the Pollution Control Hearings Board determined that the permit provided reasonable stormwater controls (PCHB No. 95-141, *Save Lake Sammamish vs. Ecology and the Department of Transportation*). However, the board found that there were no provisions in state law to exempt small municipalities from permit coverage and ordered Ecology to "issue a modified permit extending coverage under the general permit for construction activities to municipalities within the state with populations under 100,000". This permit was modified on July 24, 1998, removing the municipal exemption in order to comply with the PCHB's order. This modification did not change any stormwater control requirements of the permit and did not make any other changes to permit coverage.

The construction stormwater general permit proposed for reissue on October 4, 2000 is based on the 1995 permit (as modified in 1998). There have been no substantive changes to the permit requirements. The only changes made were to make the permit consistent with the revised timeframe, effective as of November 18, 2000 and expiring November 18, 2005.

### **Ecology's Approach to Reissuance**

There are currently about 800 permittees with coverage under the construction stormwater general permit. The existing stormwater general permit expires on November 18, 2000. It is critical that Ecology has a replacement permit in place when the construction stormwater general permit expires. The November date however, did not work well for implementing the new requirements under "Phase II Storm Water Regulations" that were published by the Environmental Protection Agency (EPA) in December 1999. Implementation of permitting for small construction sites (1 to 5 acres) for instance, is not required under Phase II until March 2003. In order to proceed as efficiently as possible and avoid doing the same work twice, Ecology decided to make revising and reissuing this permit a two step process:

#### **Step 1: Reissue the permits "As-Is"**

No changes were made to the current permit language other than to reflect the new issuance and effective dates and make permit language consistent with this new timeframe. The reissued permit will become effective November 18, 2000 and will expire November 18, 2005.

#### **Step 2: Revise and Renew the Permits**

Immediately after completing the reissue of these permits, Ecology will begin the process to fully consider the stormwater issues associated with this permit and revise the permit as necessary. Ecology will also implement EPA's Phase II Storm Water Regulations as they apply to this permit. Ecology plans to revise and reissue the permit before March 10, 2003, replacing the existing permit before its expiration date and complying with EPA implementation deadlines.

### **Continuing the General Permit Approach**

A general permit approach for construction stormwater is an appropriate permitting approach for the following reasons:

- A general permit is the most efficient method to handle the large number of construction stormwater permit applications;
- The application requirements for coverage under a general permit are far less rigorous than individual permit application requirements;
- A general permit is consistent with USEPA's four-tier permitting strategy, the purpose of which is to use the flexibility provided by the Clean Water Act in designing a workable and reasonable permitting system;

- A general permit is an efficient method to establish minimum regulatory requirements that are appropriate for a broad base of construction activities;
- A general permit is the most practical way to apply Ecology's limited resources for implementing the federal stormwater regulations.

### **Construction Activity General Permit is an NPDES and a State Waste Discharge Permit**

In addition to the authority to issue NPDES permits, Ecology also has authority under state law to issue State Waste Discharge permits for discharges to state surface waters, ground waters and municipal sewer systems. The stormwater general permit for construction activity is issued under both authorities.

This allows Ecology to not only regulate discharges to surface waters under the permit, but also to regulate discharges to the ground. However, Ecology will not regulate under this permit those construction activities which discharge only to the ground. Ecology will regulate under this permit, those operations which have a discharge to the ground only if they also have a discharge to a surface water, a municipal storm drain, or a privately owned storm drain which discharges to surface water.

### **Description and Rationale For Construction Activity General Permit Conditions**

#### **Summary:**

The General Permit for stormwater discharges associated with construction activities requires application of technology-based stormwater management controls (referred to as Best Management Practices or BMPs) for those construction activities which will disturb five or more acres of total land area (or other minimum land area to be determined by federal regulation). The permit requires the permittee to identify and control pollution sources from their operations.

The pollutant control, inspections, and compliance with standards provisions of this permit include specific requirements as well as references to Ecology's Stormwater Management Manual (SWMM). Each discharger is required to select those BMPs best suited for reducing pollutants in its stormwater based on site-specific conditions.

A Stormwater Pollution Prevention Plan (SWPPP) for construction activities must include a description of stabilization and structural practices to be used at the site to minimize erosion and the movement of sediments on and from the site. The permit requires compliance with six stabilization requirements and five structural requirements, through selection and implementation of appropriate BMPs from the SWMM or equivalent manuals.

#### **Clarification of the term *Point Source*:**

To require coverage under the Baseline General Permit, a facility must have a point source discharge to a surface water of the state or to a municipal storm drain or a private storm drain which discharges to a surface water. A point source is defined as:

*any discernible, confined, and discrete conveyance, including but limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, and container from which pollutants are or may be discharged to surface waters of the state.*

Stormwater may be discharged in a number of ways. Pipes, channels, and drainage ditches are the most obvious ways. But stormwater discharges can also be small rivulets in wheel-rutted roads, small swales, or other depressions in the ground. Even "sheet flow," like that across a flat area is considered a stormwater discharge if it ends up in a storm drain or a "surface water."

Surface waters include, lakes, rivers, ponds, streams, wetlands, inland waters, and salt waters. Typically, dry draws or intermittent streams, and roadside ditches are classified as surface waters. Surface waters can be man-made or natural, seasonal or year-round.

Ecology intends to embrace the broadest possible definition of point source consistent with the legislative intent of the Clean Water Act and pertinent court interpretations to include any identifiable conveyance from which pollutants might enter the waters of the state.

In most court decisions interpreting "point source," the term has been interpreted broadly. For example, the holding in *Sierra Club vs. Abston Construction Company, Incorporated*, 620 F.2d 41 (5th Cir. 1980) indicates that changing the surface of land or establishing grading patterns on land will result in a point source where the runoff from the site is ultimately discharged to waters of the United States. The following is an excerpt from that court ruling:

*Conveyances of pollution formed either as a result of natural erosion or by material means, and which constitute a component of a drainage system, may fit the statutory definition and thereby subject the operators to liability under the Act. 620 F.2d at 45."*

## **Discussion Of Permit Conditions**

### **S1-Application for Coverage:**

To obtain coverage for construction activities under the construction stormwater general permit, you must submit an application for coverage. The permit application is called a Notice of Intent (NOI) and must be submitted to Ecology on or before the date of the first public notice and at least 38 days prior to the start of construction activities. Ecology must have the permit application during the public comment period in order to provide the public access to the applications as required by WAC 173-226-130(5). **NOTE:** Ecology cannot grant permit coverage until 30 days after the date of the second Public Notice.

#### **A. Public Notice Requirement**

At the time of application the permittee must publish a notice that they are seeking coverage under Ecology's general stormwater permit for construction activities. This notice must be published at least once each week for 2 consecutive weeks, in a single newspaper which has general circulation in the county in which the construction is to take place. Refer to the NOI instructions for public notice language requirements. State law requires a 30 day public comment period prior to permit coverage, therefore permit coverage will not be granted sooner than 31 days after the date of the last public notice.

#### **B. Stormwater Pollution Prevention Plan (SWPPP) Deadlines**

Permit coverage will not be granted until the permittee has indicated completion of the SWPPP or certified that development of a SWPPP in accordance with S9 of this permit will occur prior to the commencement of the construction activity. SWPPPs are not submitted to Ecology but retained on-site or within reasonable access to the site to be made available to Ecology and local governmental agencies upon request.

**C. State Environmental Policy Act (SEPA) Notification**

The permittee must comply with the SEPA process and provide the following information prior to receiving permit coverage: the type of SEPA document required, the date and agency which issued the final determination and whether or not the permittee is aware of any appeals of the adequacy of the SEPA document. If the above information is not supplied on the NOI it must be supplied in writing to Ecology prior to permit coverage.

**S2-Permit Coverage:**

This section explains how to obtain coverage under the permit; who is required to apply for coverage; who is not required to apply for coverage (but may apply if they wish), and who is excluded from coverage under this permit.

**A. How to Obtain Coverage:**

Please refer to the section entitled "How and Where to Apply for Coverage Under this Permit," (page 11 in this fact sheet).

**B. Construction Activities Required to Seek Coverage:**

Construction activities that meet both of the following criteria must seek coverage.

1. Construction activity which results in the disturbance of five acres or more land (or other minimum land area to be determined by federal regulation), including clearing, grading, and excavation activities; and those sites or common plans of development or sale that will result in the disturbance of five acres or more total land area; and
2. Construction activities in the above category which discharge stormwater either directly to a surface water or indirectly, through a municipal or private storm drain, must apply for coverage under the baseline general permit.

**Applying the five acre threshold:**

If the construction is "part of a larger common plan of development or sale," defined as a contiguous area where multiple separate and distinct construction activities may be taking place on different schedules under one plan, the total area that will be disturbed must be considered. For example, if the total land area to be disturbed in the phased construction of a subdivision totals five acres or more, Ecology's stormwater permit must be obtained prior to beginning construction on the first phase.

For construction of subdivisions, the five acre threshold which triggers the National Pollutant Discharge Elimination System (NPDES) permit requirement applies only to land which is disturbed by the land owner, land owner's representative, or a contractor to the land owner. If the owner (or the owner's representative or contractor) is only installing roads and utilities, only land disturbed for that construction is calculated to determine whether the five-acre threshold will be exceeded. Land to be disturbed by independent contractors who purchase lots from the owner should not be considered unless the individual lots are disturbed (e.g., by grading) prior to being sold.

If an independent contractor has purchased contiguous individual lots which will disturb a total of five acres or more, that contractor must obtain a stormwater permit from Ecology.

**C. Construction Activities Not Required to Apply:**

This is a listing of construction activities which are not required to apply for coverage under this permit. If an operator of one of these facilities wishes to seek coverage under the permit, they may submit a Notice of Intent.

Ecology will consider the application, but reserves the right to refuse coverage. An example situation in which Ecology will likely not require coverage is for Comprehensive Environmental Response Compensation & Liability Act (CERCLA) sites whose stormwater discharges are being regulated under a consent decree or order issued by Ecology or USEPA.

Ecology will also not require coverage for emergency construction, and routine maintenance.

We request that operators wanting permit coverage but that are not required to obtain coverage submit a cover letter with their Notice of Intent. The letter should explain why they are seeking coverage under the permit.

**D. Construction Activities EXCLUDED from Coverage Under This Permit:**

This is a listing of construction activities for which Ecology will not consider coverage. The list includes silvicultural activities, projects that are federally owned or operated or are on Tribal land and discharges that originate from the site once construction activities have been completed.

**E. Coverage for Significant Polluters:**

This section allows Ecology to regulate stormwater dischargers which are a "significant contributor of pollutants." The federal Clean Water Act at Section 402(p)(2)(E) gives the state this authority. Ecology, not the discharger, decides whether there is a significant contribution of pollutants warranting coverage under this permit.

**F. Coverage for Discharges to Ground Water:**

This section highlights that for sites covered under the permit, the permit terms and conditions apply to all stormwater discharges, including discharges to the ground.

**S3-Authorized Discharges:**

This section authorizes discharge of stormwater from all new and existing point source discharges of stormwater and construction dewatering associated with construction activity to surface waters of the state of Washington and/or to municipal storm drains from sites covered under the permit.

Sampling and analysis may be needed on a case-by-case basis for discharge of construction dewatering waters to ensure compliance with standards. Dewatering in areas where the potential for ground water contamination exists should not be discharged without characterization of the ground water to be discharged. For guidance on the discharge of dewatering waters contact your Ecology Regional Office.

**S4-Discharge Prohibitions:**

This section prohibits the discharge of process wastewater, domestic wastewater, or noncontact cooling water to a storm drain unless it is under an appropriate discharge permit.

This section also prohibits the discharge of stormwater to sanitary or combined drains unless approved by the municipality receiving the stormwater. This is necessary to limit the dilution of sanitary wastewater and the hydraulic loading of sanitary drains and treatment plants.

This section also makes it clear that illicit discharges are not authorized, including spills of oil or hazardous substances, and does not relieve entities from obligations under state and federal laws and regulations pertaining to those discharges. This addition to the permit is necessary due to a waiver in federal law from Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability for discharges authorized by NPDES permits.



#### **S5- Compliance with Standards:**

This section highlights that stormwater discharges associated with construction activity are subject to all applicable state water quality and sediment management standards. The permit does not authorize the violation of those standards.

Where construction sites are not in compliance with these standards the permittee shall take immediate action(s) to achieve compliance by implementing additional BMPs and/or improved maintenance of existing BMPs. Note that even if an operation is not causing a water quality standards violation with its current stormwater discharge, it is still obligated to apply and maintain reasonable BMPs to prevent and control the discharge of pollutants in stormwater.

#### **Compliance With Technology-Based And Water Quality-Based Requirements Of The Clean Water Act And State Law**

Discharges of stormwater must meet all applicable provisions of Sections 301 and 402 of the Clean Water Act. These provisions require control of pollutant discharges to a level equivalent to Best Available Technology Economically Achievable (BAT) for toxic and unconventional pollutants, and Best Conventional Pollutant Control Technology (BCT) for conventional pollutants, and any more stringent limitations necessary to meet water quality standards. In addition, state law requires discharges to apply all known, available, and reasonable (methods) of treatment (AKART) to prevent and control the pollution of the waters of the state of Washington. State law also requires any other more stringent limitations necessary to meet all applicable state standards.

The requirements of this permit are narrative. The permit requires the development and implementation of a SWPPP which includes BMPs to prevent the pollution of stormwater and to reduce the amount of pollutants discharged. USEPA has proposed that implementing BMPs constitutes BAT and BCT for most stormwater discharges. Ecology considers that development of the SWPPP and implementation of available and reasonable BMPs constitutes implementation of AKART.

In this permit, Ecology requires construction project owners (or the owners agent) to use the SWMM (or an equivalent manual) to make a judgment of which BMPs are necessary to achieve compliance with the BAT and BCT requirements of federal laws, as well as the AKART requirements of state law. Although Ecology will not review the vast majority of SWPPPs prior to their implementation, it reserves the right to review those plans and require additional measures to prevent and control pollution.

Ecology expects that the selection and implementation of appropriate BMPs outlined in the SWMM, or equivalent manuals, will result in compliance with standards for stormwater discharges from construction sites. Erosion and sediment control planning guidance and design criteria for BMPs to control stormwater runoff quantity, erosion and sediments as well as other pollutants are provided in the SWMM. Proper implementation and maintenance of these controls should be all that is necessary to adequately control any adverse water quality impacts from construction activity.

#### **Mixing Zones:**

Mixing zones are sized for the pollutant with the largest potential to violate water quality standards. Stormwater discharges from construction sites have historically caused violations of state standards for turbidity caused by suspended solids. The following is a summary of the factors that must be considered in determining whether a mixing zone should be authorized for a particular discharge:

- (1) A discharger shall be required to fully apply all known available and reasonable methods to prevent and control pollution (AKART) prior to being authorized a mixing zone. In this case, as discussed above, an adequate SWPPP and implementation are considered compliance with AKART.
- (2) Mixing zone determinations shall consider critical discharge conditions.

- (3) The mixing zone will not cause a loss of sensitive or important habitat.
- (4) Water quality standards will not be violated outside of the boundary of the mixing zone.
- (5) The size of a mixing zone and the concentrations of pollutants shall be minimized.
- (6) The size of a mixing zone shall consider the following:

The overlap of adjacent mixing zones; discharge and receiving water flow; width of the receiving water; downstream and upstream conditions; and depth of water over the discharge port(s).

Mixing zones are not set in the construction stormwater general permit due to the wide variety of discharge situations. It would be impractical to include mixing zone language that could account for conditions at all the sites covered under the permit. Ecology is taking a discretionary approach to compliance with standards with respect to dilution zones.

Permit compliance will be based, in part, on the adequacy of the stormwater plan and its implementation to prevent the discharge of toxic materials, settleable solids, and to reduce turbidity in the discharge.

In determining in-stream compliance with standards, Ecology will, on a case-by-case basis consider dilution zones. Ecology will take into account weather conditions as they relate to design storms for which BMPs are sized, and available dilution and background conditions in the receiving water. Dilution zones will only be considered when adequate SWPPPs have been prepared and implemented.

Pollutants that might be expected in the discharge from construction activity are: turbidity, pH, and petroleum products. The majority of surface water discharges are to Class AA & A waters of the state. The water quality standard for turbidity and pH for these classes of waters is:

**Class AA & A Waters :**

Turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

pH shall be within the range of 6.5 to 8.5 (freshwater) or 7.0 to 8.5 (marine water) with a human-caused variation within a range of less than 0.2 units for Class AA waters and 0.5 for Class A waters.

Although there is no specific water quality standard for petroleum products the hazardous waste rules under RCW 90.56 can be interpreted under RCW 90.48 to allow no visible sheen in the stormwater discharge or in the receiving water.

**S6- Sampling and Analysis:**

Ecology does not require monitoring (i.e., sampling and analysis of stormwater) in the permit. At this time, Ecology expects that many operations, through the proper selection, implementation, and maintenance of BMPs, have or will have minimized their potential for discharging pollutants.

Although we are not requiring stormwater sampling and analysis, Ecology encourages permittees to do so. Monitoring can provide important information about the sources and types of pollutants in stormwater. This information can be useful when designing or modifying BMPs, and when evaluating the effectiveness of BMPs.

If permittees choose to do some monitoring, we encourage them to follow the referenced sampling and analysis procedures. Following the recommended procedures will help in establishing a base of comparable stormwater data which could have various benefits to the discharger and to the environment.

**S7- Fees:**

State law requires Ecology to recover the cost of the Water Quality Permit Program. Stormwater fees are determined through a rule development process that includes the input of an advisory committee. There will be opportunities for public comment on any new fee proposal. Fees are set by amending the existing fee regulation (Chapter 173-224 WAC).

**S8- Solid and Liquid Waste Disposal:**

This condition is intended to ensure that disposal and handling of solid or liquid wastes generated to comply with the requirements of this permit do not result in a violation of applicable solid and hazardous waste regulations (Chapter 173-303 and 173-304 WAC). It is expected that containment, collection, separation and settling are some of the control techniques for stormwater which will result in the generation of solid and liquid wastes. In some cases, management and housekeeping techniques could also generate solid and liquid wastes. Examples include drip traps, cleanup of process areas and spill removal. Therefore, Ecology views this permit requirement as an important component of the overall stormwater pollution control strategy.

**S9- Stormwater Pollution Prevention Plan for Construction Activities:**

This section outlines the requirements for the preparation and implementation of a stormwater pollution prevention plan for construction activities.

**A. Objectives:**

The objectives of the permit are to implement Best Management Practices (BMPs) to minimize erosion and sediments from rainfall runoff at construction sites, including construction dewatering, and to reduce, eliminate, or prevent the pollution of stormwater, to eliminate discharges other than stormwater, to implement BMPs to prevent, reduce and control the discharge of pollutants, to prevent violations of water quality standards, and to control the quantity of stormwater runoff.

**B. General Requirements:**

Ecology requires the owner of the construction project to be the permittee. Having the owner as the permittee is necessary so that there is enough time to prepare the SWPPP prior to initiating construction. Ecology requires the owner to identify a contact person on the NOI who is always available to respond to Ecology inquiries or directives and has control over the day-to-day operation of the site. The contact person must have authority over SWPPP implementation. This person can be the owner, an employee, a construction manager, a developer, or an on-site contractor. Having the owner obtain the permit will simplify permit compliance responsibility. It does not change the historical contractual relationship between a site owner and a contractor and does not necessarily protect the contractor from Ecology enforcement actions for water quality violations caused by the contractor.

**C. SWPPP Contents and Requirements:**

The Stormwater Pollution Prevention Plan for construction activities must define how a site will be managed to control erosion and limit sediment flowing into waters of the state. The SWPPP must include a description of the site and it must describe the stabilization and structural practices that will be implemented to prevent erosion from occurring and to minimize the transport of sediments on and from the site. It must be retained on-site or within reasonable proximity to the site and the BMPs identified in the plan must be implemented.

Most of the enumerated requirements for stabilization and structural practices are excerpted from Ecology's fifteen minimum requirements for erosion and sediment control from Chapter I-2 of the SWMM. Fourteen of those fifteen minimum requirements are included in the construction permit. Ecology considers the 14

minimum requirements of the SWMM to be reasonable. They have been developed after several years of review by outside experts.

Experience with use of the minimum requirements of the SWMM over the next few years by some local governments will help identify any problems and lead to their refinement. Ecology may include more specific minimum requirements, including references to maximum time frames for exposed and unworked soil, and to specific discharge flow rates, in the next version of the SWMM.

#### Selection of Stabilization and Structural BMPs:

Permittees are required to select appropriate BMPs to meet the requirements of stabilization and structural practices from the Ecology SWMM, and the Erosion and Sediment Control Handbook, by Goldman, et al. Permittees may select BMPs not discussed in those manuals if they determine that they are equivalent and appropriate for their situation.

Ecology requires the Erosion and Sediment Control Plan to consist of a narrative and a set of site plans. The SWMM is referred to for guidance on the format of the Erosion and Sediment Control Plan. Permittees are not required to follow this suggested format. However, Ecology will use the suggested format as guidance for evaluating the adequacy of plans and their implementation.

#### Coordination with Local Requirements:

The permit does not relieve the permittee of compliance with any more stringent requirements of local government. As required by the Puget Sound Water Quality Management Plan, local governments within the Puget Sound Basin are to adopt minimum requirements for construction which are at least equivalent to the 15 minimum requirements listed in Chapter I-2 of Ecology's SWMM. Where Ecology has determined such local requirements to be equivalent, compliance with the local requirements meets the requirements of this permit.

At the issuance date of this permit the following manuals have been deemed equivalent: Seattle, King County, Washington State Department of Transportation (WSDOT), Snohomish County, Lacey-Olympia-Tumwater-Thurston County (LOTT), Sequim, Mason County, City of Everett, Kitsap County, and Clark County.

#### **S10-Notice of Termination (NOT) for Construction Sites:**

This section describes how permittees can terminate permit coverage once they have finally stabilized their site. When soil disturbing activities have ceased and all exposed soils have a permanent vegetative cover, or equivalent permanent stabilization measure which prevent erosion, the permittee shall submit a Notice of Termination form (Appendix 2 of your permit). A Notice of Termination for a construction site will end the permit coverage and responsibility of the permittee(s) to be subject to the conditions of the permit. The permittee is responsible for submitting the termination notice in order to end permit coverage. Unless the permit is terminated, Ecology will continue to assess a fee for the permit.

#### **General Conditions:**

The General Conditions of this permit are requirements based on federal or state laws and regulations which must be included in all NPDES general permits, either expressly or by reference. Ecology has decided to incorporate the relevant requirements of federal and state law expressly.

### **How And Where To Apply For Coverage Under The Construction Permit**

#### **A. How to Obtain Permit Coverage:**

The Notice of Intent (NOI) is the official permit application document required to request coverage under Ecology's Stormwater General Permit for construction activities. Ecology intends to notify applicants by mail

of their status concerning coverage under the permit within 10 working days of Ecology's receipt of a complete NOI. An NOI is only deemed complete after the 30 day public notice requirement has been satisfied, a stormwater pollution prevention plan has been developed, a final SEPA determination has been made, and all other NOI information has been supplied.

Upon receipt of a complete NOI Ecology will notify the applicant of their status either through written authorization of permit coverage or by sending a letter to the applicant giving a date when permit coverage will automatically commence. Coverage will begin from the date of Ecology's written authorization or will automatically commence on the date specified by Ecology. The submission deadlines for NOIs are included in Special Condition S1 of the permit.

**B. Where to Apply for Permit Coverage**

For construction activities, the site owner, or the entity obtaining a use agreement for the site, is responsible for completing and submitting the NOI for Construction Activity. An NOI, signed by an appropriate corporate, local government or other official responsible for the site shall be submitted to the following Ecology office:

Washington Department of Ecology  
Water Quality Program  
Stormwater Permitting  
P. O. Box 47696  
Olympia, WA 98504-7696

**Permit Issuance and Announcement**

Ecology intends to sign this permit on October 4, 2000. An announcement of permit issuance will appear in the state register on October 18, 2000. The permit becomes effective on November 18, 2000.

In addition to the announcement in the State Register, Ecology will publicize the issuance of the permit by mailing the announcement to our interested parties list.

The terms and conditions of the permit are subject to appeal by any person within 30 days after issuance of the general permit as noticed by publication in the State Register (no later than November 17, 2000). An Ecology decision concerning coverage of an individual discharger under the permit is subject to appeal within 30 days of the effective date of coverage of that discharger.

**Small Business Economic Impact Statement (SBEIS):**

Ecology prepared a small business economic impact statement for the original permit issued on the November 18, 1992. The SBEIS was updated when the permit was reissued in 1995. Since the proposed permit is being reissued with no changes to the 1995 permit requirements, the SBEIS was not revised. A copy of the SBEIS may be obtained by calling (360) 407-7156 or by download from Ecology's webpage ([www.wa.gov/ecology/biblio/9567.html](http://www.wa.gov/ecology/biblio/9567.html)).

## Appendix A – Response to Public Comments

The Puget Soundkeeper Alliance and Smith & Lowney, P.L.L.C. submitted timely public comments on the Construction Stormwater General Permit. No testimony was given at the public hearings and no comments were received after the close of the comment period.

Comments have been grouped together where they address similar topics. Topic headings were provided and numbered to improve readability. No major changes were made to the permit because of the comments received. A minor change was made to Special Condition S4.B. for clarification.

### **S4. Discharge Prohibitions**

#### **Existing:**

- B. Discharges of stormwater to sanitary or combined sewers shall be limited pursuant to Chapter 173-245 WAC. Discharges of stormwater to sanitary or combined sewers shall not occur without the approval of the municipality which owns or operates the sanitary or combined sewer system.

#### **Changed to (change underlined):**

- B. Discharges of stormwater to sanitary or combined sewers shall be limited pursuant to Chapter 173-245 WAC and WAC 173-226-100. Discharges of stormwater to sanitary or combined sewers shall not occur without the approval of the municipality which owns or operates the sanitary or combined sewer system.

### **1. Issuing the Construction Stormwater General Permit Without Update Is Unacceptable:**

**Comment - Smith & Lowney, P.L.L.C.**

*Stormwater discharges from construction sites can be some of the most polluted discharges covered by Ecology's NPDES program. Stormwater discharges can cause very serious environmental degradation – especially as a greater percentage of our land is covered by impervious surfaces and our salmonids disappear. Due to the lack of numerical effluent limitations, monitoring and reporting requirements, and the unavailability of stormwater pollution prevention plans for public review, we have been very frustrated over the past five years when confronted with covered dischargers who appear to cause pollution problems. When combined with the General Permit's lack of an unequivocal requirement that water quality standards be attained, the General Permit is essentially unenforceable by citizens in most situations. A primary policy goal of the Clean Water Act is the elimination of water pollution and the purpose of the National Pollutant Discharge Elimination System is just that. The General Permit should be rewritten to move covered facilities towards this goal.*

*In drafting this General Permit, Ecology seems more interested in assuring dischargers that compliance will be easily attained than in protecting the environment. While we appreciate the potential for backlash against regulatory requirements by the regulated community, such potential cannot justify the issuance of permit that fails both to meet legal standards and provide meaningful environmental protection.*

**Comment - Puget Soundkeeper Alliance**

*The Puget Soundkeeper Alliance is concerned that the (presume construction was intended) Industrial Permit was reissued without any significant changes to the permit. The goal of the Clean Water Act is to eliminate the discharge of pollutants to the nation's waters; however, the Department of Ecology is ignoring this goal by reissuing essentially the same permit for another 5 years.*

*Stormwater discharges from industrial (presume construction was intended) facilities are a significant contributor to the degradation of Puget Sound. To reissue the permit at a time when salmon species are threatened with extinction and many other species including Pacific herring, rockfish, and even Orcas are at risk is not a responsible action by the agency mandated to protect the waters of Puget Sound and the state.*

*The goal of the Clean Water must be met and the Department of Ecology must do its part to insure compliance. Individual National Pollutant Discharge and Elimination System (NPDES) permits are slowly reducing the discharge of effluents. There is absolutely no reason why industrial stormwater dischargers should not be held to the same standard.*

*The Puget Soundkeeper Alliance recommends that the General Industrial Stormwater Permit be rewritten to insure compliance with the goals of the Clean Water Act.*

**Response**

Ecology agrees that stormwater discharges from construction sites can be a significant source of pollution. This is why the construction stormwater general permit requires the permittee to achieve compliance with water quality standards through implementation of best management practices to prevent contamination of stormwater to the maximum extent practicable and treat contaminated stormwater before discharge. Ecology does not agree that there are any fatal flaws in the permit as written that require immediate attention to assure environmental protection.

The U.S. Environmental Protection Agency (EPA) has also promulgated new stormwater permitting requirements. These regulations, known as the Phase II stormwater regulations, do not become mandatory until March 2003. Because Ecology will reopen the permits in order to address and implement the new federal regulations, enhancing and clarifying language will be considered as part of that process.

**2. The Expiration Date Should Be March 10, 2003:**

**Comment - Smith & Lowney, P.L.L.C.**

*The expiration date of the General Permit should be March 10, 1993 (assume 2003 was intended), rather than the proposed expiration date of November 18, 2005. In the draft fact sheet, Ecology states that it intends to revise and reissue the General Permit by March 10, 2003, to comply with EPA implementation deadlines for its Phase II Storm Water Regulations. Draft Fact Sheet at 3. The expiration date should be changed to reflect this intent and to avoid illegal delay in the next reissuance.*

**Response**

Ecology is committed to a revision process that will address the new federal regulations within the federally mandated timeframe. This will result in reissuing these permits before they expire. However, as a standard practice, Ecology typically issues permits for the maximum time

statutorily allowed and finds no compelling reason to do otherwise for these permits. The federal deadlines are sufficient to assure an early consideration and reissue.

### **3. Permit Fails to Require Compliance With Standards**

#### **Comment - Smith & Lowney, P.L.L.C.**

*The General Permit should clearly and unequivocally require compliance with state surface and ground water quality standards. Per 40 C.F.R. § 122.44(d), WAC 173-226-070(2), and WAC 173-201A-160, compliance with state water quality standards must be a requirement of the General Permit. Instead of a clear statement such as "discharges that cause or contribute to a violation of water quality standards are prohibited," the General Permit states that, for permit compliance purposes, compliance with standards means that a SWPPP has been prepared and implemented. Condition S5. Nothing in the General Permit makes it illegal per se for a discharger to cause a violation of water quality criteria as the law requires. WAC 173-201A-160(3).*

#### **Comment - Puget Soundkeeper Alliance**

*The General Stormwater Construction Permit must require compliance with the state surface and groundwater quality standards. Condition S.5. never clearly states that compliance with water quality standards is a requirement and that violations of the standards are prohibited. The only discussion states that an adequate Stormwater Pollution Prevention Plan (SWPPP) has been prepared and fully implemented.*

*The Puget Soundkeeper Alliance recommends that the draft permit be rewritten to include language mandating compliance with the water quality standards.*

#### **Response**

The construction stormwater general permit does not authorize the illegal discharge of pollutants to waters of the state. Special Condition S5. Compliance with Standards states: "The permittee is responsible for achieving compliance with state of Washington surface water quality standards (Chapter 173-201A WAC), sediment management standards (Chapter 173-204 WAC), ground water quality standards (Chapter 173-200 WAC), and human health based criteria in the National Toxics Rule (Federal Register, Vol. 57, No. 246, Dec. 22, 1992, pages 60848-60923)." The permit language places the responsibility to comply on the permittee.

The permittee is required to develop a stormwater pollution prevention plan (SWPPP) which identifies the best management practices (BMPs) that will be implemented to manage stormwater discharges. Because compliance is achieved by implementing BMPs it is measured by an evaluation of the SWPPP. Special Condition S5. states (in part):

*For permit compliance purposes compliance with standards means:*

- i) *An adequate SWPPP has been prepared and fully implemented;*

Adequate should not be construed as whatever the permittee deems as sufficient but as the plan that achieves compliance with standards. Ecology reserves the right to determine by best professional judgement or sampling and testing if the permittee is successful and in compliance. Since compliance with standards is already required, no change is necessary.



#### **4. Require Numeric Effluent Limits**

**Comment - Smith & Lowney, P.L.L.C.**

*The General Permit should set numerical effluent limitations for pollutants for which industrial (presume construction was intended) stormwater discharges have reasonable potential to violate. Since WAC 173-201A-160(3) and 173-226-070(2)(a) mandate that the General Permit require compliance with water quality standards, WAC 173-226-070(6)(a) applies to require the inclusion of numerical effluent limitations on pollutant quantitative mass or concentrations.*

**Comment - Puget Soundkeeper Alliance**

*There are no numerical effluent limitations for pollutants.*

*The Puget Soundkeeper Alliance recommends that the permit be amended to include specific numerical limits for stormwater discharges in compliance with the water quality standards.*

**Response**

WAC 173-201A-160(3) identifies application of best management practices (BMPs) as the primary approach to achieve compliance with standards for nonpoint and stormwater discharges. This approach is also consistent with U.S. Environmental Protection Agency guidance on implementing water quality-based effluent limitations in stormwater permits. The construction stormwater general permit correctly applies narrative requirements through implementing BMPs to achieve compliance with standards.

None of the referenced administrative code in the comments above requires that a general permit include numeric limits to assure compliance with water quality standards. WAC 173-226-070(2)(a) lays the basis for including water quality-based effluent limitations “if necessary” to achieve compliance. Likewise, WAC 173-226-070(6)(a) does not require the inclusion of effluent limits but rather it lays out how water quality-based effluent limits are to be applied in a general permit if limits are included. Ecology believes that the appropriate focus should remain on the choosing and applying of best management practices as outlined in the permit. Although Ecology will consider monitoring options and possible application of limits in the future, we do not believe that they are essential to compliance with standards under this general permit. Numeric limits will not be added at this time.

#### **5. Permit Must Require Monitoring**

**Comment - Smith & Lowney, P.L.L.C.**

*Ecology should include monitoring requirements in the General Permit as authorized by WAC 173-226-090. Actual monitoring of stormwater discharges is necessary to gauge compliance with water quality standards. How can anyone determine whether a discharge is an actual environmental problem without monitoring?*

**Comment - Puget Soundkeeper Alliance**

*The permit does not require any sampling or monitoring of pollutant discharges, so it is not certain how the Department of Ecology will determine or a facility will know whether or not it is in compliance with water quality standards.*

*The Puget Soundkeeper Alliance recommends that the permit be rewritten to include monitoring requirements to insure compliance with water quality standards.*

**Response**

The construction stormwater general permit does require monitoring. The permit requires the application of BMPs to comply with standards and under Special Condition S9.C.1.d. requires that "All BMPs shall be inspected, maintained, and repaired as needed to assure continued performance." These inspections are required at least once every seven days and within 24 hours after any storm event of greater than 0.5 inches of rain per 24 hour period. Since the pollutant of concern is sediment, visual inspection is a very effective way to determine how well BMPs are working. No additional monitoring will be required at this time.

**6. Require Submission of SWPPPs**

**Comment - Smith & Lowney, P.L.L.C.**

*The General Permit should require permittees to submit SWPPPs and regular inspection reports to Ecology. Development and implementation of a SWPPP are the central requirements of the General Permit. Determining whether a discharger has complied with these requirements should be simplified by having these documents on file at Ecology's offices. As the General Permit is now drafted, it is virtually impossible for a concerned citizen to determine whether a discharger has developed or is implementing a SWPPP because they are generally not available for public review.*

**Comment - Puget Soundkeeper Alliance**

*There is no requirement in the permit for the permitted facility to submit its SWPPP to the Department of Ecology so that it is available not only for agency oversight, but public review as well. This is a significant flaw in the existing permit, which hinders citizen involvement in the enforcement of the Clean Water Act.*

*The Puget Soundkeeper Alliance recommends that S.9. be amended to include a provision requiring the submittal of a SWPP prior to the issuance of the General Industrial (presume this should be Construction) Stormwater Permit.*

**Response**

Ecology determined that collecting large quantities of stormwater pollution prevention plans (SWPPPs) at the Ecology office provided very little value added and would result in considerable cost in time and effort to maintain and administer. Maintaining a central repository of SWPPPs would be challenging because coverage of construction sites is very dynamic with a high volume of sites obtaining coverage and terminating coverage. Permittees are also required to continually examine the success of their BMPs and update the SWPPP as necessary. All these factors would result in a labor-intensive task that would divert considerable Ecology resources just to maintain the repository. Since the most valuable location for these documents is onsite in use by the permittee and available for review during an Ecology inspection, permittees were not required to submit their SWPPP and associated updates.

However, the permit does recognize the need for public access. Special Condition S9.B.3. states: "The public may obtain a copy of a permittee's SWPPP by request from Ecology." S9.B.4. requires the permittee to make these documents available to Ecology upon request. Any citizen concerned about a discharger has only to request the information for that discharger. Ecology does not believe this is an unreasonable burden; permit language will remain as it is.

## **7. Permit Fails to Protect Impaired Waterbodies**

**Comment - Smith & Lowney, P.L.L.C.**

*Facilities that discharge to waterbodies on the 303(d) list should not be eligible for coverage under the General Permit. The 303(d) list includes waterbodies that do not meet water quality standards. 33 U.S.C. § 1313(d). Those who discharge industrial (assume construction was intended) stormwater to such listed waters should be covered under NPDES permits specifically tailored to ensure that their discharges do not exacerbate identified water quality problems. Ecology has developed total maximum daily loads ("TMDLs") for some of the 303(d)-listed waterbodies. WAC 173-226-070(3)(c) requires that a general permit for a discharge to a waterbody with a TMDL "implement any legally applicable requirements necessary to implement total maximum daily loads." The General Permit must be changed to ensure that this requirement will be met for qualifying dischargers.*

**Comment - Puget Soundkeeper Alliance**

*The draft permit fails to address two significant issues: the enforcement of the "take" provision of the Endangered Species Act and the relationship between the 303(d)-listed waterbodies and stormwater discharges.*

*The Puget Soundkeeper Alliance recommends that facilities discharging to 303(d) listed waterbodies or taking species listed as threatened or endangered not be issued a permit.*

### **Response**

It is true that the permit does not specifically single out discharges to 303(d) listed waterbodies or waterbodies where a TMDL has been applied. However, the permit does require compliance with standards and that is typically considered protective of impaired waterbodies. As with all general permits, Ecology reserves the right to require an individual permit when site specific conditions indicate. A 303(d) listed water body or TMDL where the pollutant of concern is sediment, could be such a condition if typical application of BMPs would be insufficient to achieve environmental protection and compliance with waste load allocations. This would have to be on a case-by-case basis.

The permit also requires that those applying for coverage under the construction stormwater general permit must comply with the State Environmental Policy Act (SEPA) and must public notice their application for coverage, clearly identifying the waterbody(ies) that they will discharge to. These actions provide significant opportunity for the public to voice their concerns and the SEPA process should identify and address concerns about discharges to an impaired waterbody.

## **8. Permit Not Protective of Threatened and Endangered Species**

**Comment - Smith & Lowney, P.L.L.C.**

*The General Permit should be changed to ensure that permitted discharges do not result in the "take" of fish species listed as threatened or endangered under the federal Endangered Species Act ("ESA"). WAC 173-226-070(3)(b) requires that general permits meet the requirements of federal laws besides the Clean Water Act. There are now numerous ESA-protected stocks of salmonids and other fish species, as well as miles of waterbodies designated as critical habitat*

for these, throughout Washington. Construction stormwater discharges, by their potential to carry pollutants to which ESA-listed fish are especially sensitive and to substantially contribute to harmful scouring and peak flow effects, likely contribute to the "take" of ESA-listed fish in violation of ESA § 9 and applicable ESA § 4(d) rules. By authorizing discharges that result in "take" and by failing to ensure in the General Permit that discharges harmful to ESA-listed species are prevented, Ecology subjects itself to liability for illegal "take," as well as violating WAC 173-226-070(3)(b). See, *Strahan v. Coxe*, 127 F.3d 155 (1<sup>st</sup> Cir. 1997).

#### **Response**

Ecology issues wastewater (stormwater) discharge permits based on state law and applicable federal regulations and guidance. State law implements the federal Clean Water Act and must be at least as stringent as federal requirements. Compliance with the state water quality and sediment standards is considered protective of aquatic organisms and thereby protective of endangered species that frequent the state's waters. The construction stormwater general permit requires the implementation of BMPs necessary to comply with standards. Protection is assured by compliance with the permit and additional language is not necessary. Public notice and SEPA requirements as noted above, also provide additional opportunity to address site specific concerns.

#### **9. Discharge to Municipal Sewer Systems Inappropriate**

**Comment - Smith & Lowney, P.L.L.C.**

*The General Permit must incorporate pretreatment standards for discharges to municipal sewer systems. WAC 173-226-070(4) states, "general permits authorizing the discharge into a municipal sewerage system shall satisfy the applicable pretreatment requirements of the [Clean Water Act]." These pretreatment requirements are found, perhaps among other places, at 40 C.F.R. § 403. The General Permit authorizes discharges to municipal sewerage systems, Condition S4.B., but nowhere requires compliance with applicable requirements of 40 C.F.R. § 403 or other "applicable pretreatment requirements" in violation of WAC 173-226-070(4).*

**Comment - Smith & Lowney, P.L.L.C.**

*The General Permit must incorporate the prohibition on discharges identified in WAC 173-226-100. WAC 173-226-100 sets forth both an absolute prohibition on the authorization of particular discharges via general permit and a prohibition on particular discharges to municipal sewerage systems. These mandatory prohibitions appear nowhere in the General Permit.*

#### **Response**

There should be no question that the intent of S4.B. is to typically prohibit discharge to a municipal sewerage system since the heading is "Discharge Prohibitions". However, the prohibition as described in WAC 173-226-100 is not an absolute prohibition on discharges of stormwater to a municipal sewerage system. Ecology does agree, however, that the complete limitation is not clear as currently written and will revise the first sentence of S4.B. to read (additional language underlined):

Discharges of stormwater to sanitary or combined sewers shall be limited pursuant to Chapter 173-245 WAC and WAC 173-226-100.

Ecology does not agree that additional language must be added to "satisfy the applicable pretreatment requirements". The permit does require that a discharger receive permission to

discharge stormwater to a municipal sewerage system and not add to problems with combined sewer overflows. This requirement assures that the quantity of discharge will be acceptable to the sewerage system and not lead to upset. The permit also requires the application of BMPs to minimize the introduction of pollutants into stormwater and to remove sediment before discharge. No additional changes.

#### **10. Require All Permittees to Apply Revised Stormwater Manual**

**Comment - Smith & Lowney, P.L.L.C.**

*The General Permit should require all permittees to update their SWPPPs to meet the requirements of the soon-to-be-released updated Stormwater Management Manual for The Puget Sound Basin ("SWMM") upon its issuance, expected in January, 2001. (K. Johnson 9/12/00 workshop). As the General Permit is now written, only new facilities submitting their NOIs approximately April, 2001, or thereafter would be required to use the updated SWMM. This is because Condition S9.C.1.c. only requires use of the updated SWMM by those who are not required to select BMPs until at least 120 days after the updated SWMM is available. Since Ecology has chosen to make the SWPPP and implementation of selected BMPs the central requirement of the General Permit and is reissuing the General Permit near in time to the SWMM update, it would make sense to require its use by all permittees. To do otherwise, as the draft General Permit proposes, exposes Ecology's true primary concern – to make the General Permit requirements as easy as possible for dischargers to meet – and the secondary status of environmental protection in this permitting action.*

**Comment - Puget Soundkeeper Alliance**

*The General Construction Stormwater Permit also fails to require facilities to meet the requirements of the updated Stormwater Management Manual for the Puget Sound Basin.*

*The Puget Soundkeeper Alliance recommends that the permit be amended to include compliance with the new manual.*

#### **Response**

The construction stormwater general permit requires the permittee to achieve compliance with water quality standards, ground water standards, and sediment standards through the application of best management practices (BMPs). It would not make sense to require an existing site that is in compliance to redo their SWPPP. The focus of time and effort should be on sites that are not attaining compliance. Here application of the revised stormwater management manual for western Washington is appropriate and would be required.

Ecology takes issue with the suggestion that this permitting action gives "secondary status" to environmental protection. Ecology would not consider reissuing this permit in its current form if it were not environmentally protective. The work of Ecology is multifaceted and there are many competing demands for the time and effort of staff and other resources. Since the resources are not unlimited, prioritizing and scheduling these efforts are critical to Ecology's mission: "... to protect, preserve and enhance Washington's environment, and promote the wise management of our air, land and water for the benefit of current and future generations." Deferring a full consideration of enhancing and clarifying language to consideration with implementation of the new federal regulations does not sacrifice environmental protection but allows Ecology to more effectively complete the task within the full spectrum of work to be done.

**M**



STATE OF WASHINGTON  
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July 10, 2001

Mr. Brian Nettles  
Freeborn & Peters  
311 South Wacker Drive, Suite 3000  
Chicago, Illinois 60606-6677

In future correspondence please refer to:  
Log: 071001-23-STB  
Re: BNSF Abandonment, McMillan

Dear Mr. Nettles:

Thank you for contacting the Washington State Office of Archaeology and Historic Preservation (OAHP) regarding the above referenced action. From your correspondence I understand that Burlington Northern Santa Fe (BNSF) plans to file an exemption to abandon .24 miles of trackage in McMillan.

In response I have conducted research into the Washington State Inventory of Cultural Resources to assess the presence of historic properties in the project vicinity. This research indicates that the S.R. 162 McMillan Bridge over the Puyallup River has been inventoried and archaeological site 45 PI 456 has been identified and located about 100 meters west of the tracks. In view of the presence of this site, I recommend that a survey for other cultural resources be undertaken in the project vicinity. This survey should be conducted by qualified cultural resource professionals. I can provide you with a list of qualified consultants. Results of this survey should be provided to OAHP for review and evaluation. I also recommend that interested tribal representatives be notified and consulted about this proposal toward assessing their interest and concern about the effects of this action on cultural resources.

Again, thank you for the opportunity to review and comment. Should you have any questions, please feel free to contact me at 360-407-0766 or [gregg@cted.wa.gov](mailto:gregg@cted.wa.gov).

Sincerely,

Gregory Griffith  
Deputy State Historic Preservation Officer

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